

Determining the Number of Judges

SUMMARY

A weighted caseload study is an accepted method for determining the need for judges statewide, but Minnesota's study should be improved and updated. A committee of the Conference of Chief Judges is currently studying possible modifications to the study. Also, using retired judges benefits district courts. The Legislature should consider revising pay for retired judges.

Determining the “correct” number of judges statewide and for individual judicial districts is a complicated and politically sensitive process. For the last two decades, Minnesota has used a weighted caseload analysis based on case filing statistics and time reports from judges to estimate the number of judges that are needed. We reviewed the weighted caseload method in general and its specific application in Minnesota. We also examined how Minnesota courts use retired judges to help manage caseloads in specific judicial districts.

In this chapter we address the following questions:

- **How well does Minnesota's weighted caseload study compare with accepted guidelines for determining the need for district court judges?**
- **How helpful is the use of retired judges for managing caseloads?**

To answer these questions we reviewed national literature on weighted caseload studies and what documentation remains from Minnesota's past studies. We reviewed data from the State Court Administrator's Office on the costs and use of retired judges and minutes from meetings of the Conference of Chief Judges. We also interviewed chief judges and district administrators about their views on the weighted caseload studies and their use of retired judges.

DEFINITION OF WEIGHTED CASELOAD

Properly designed and implemented, weighted caseload analyses allow court administrators to estimate the need for judges in a state and allocate an appropriate number of judges to districts. A weighted caseload study recognizes that complex cases take more time than less complex ones. Based on the average time judges spend on a particular case type, the study assigns heavier weights to the cases that are, on average, more time consuming. Thus, for instance, the

analysis will recommend a higher number of judges for caseloads with a heavy mix of felonies than for caseloads with few felonies. We found:

- **Weighted caseload studies are widely accepted by court administrators and the National Center for State Courts for determining the number of judges needed.**

National studies strongly endorse the use of weighted caseload analysis as “the best method for assessing judicial need.”¹ The analyses often depend on consultant expertise, take many months, and require detailed reports to explain both findings and methodology.

The typical steps in conducting a weighted caseload study are:

1. Obtain accurate, current data on case filings.
2. Define appropriate methods to collect and analyze how judges use their time.
3. Collect records on use of time for a period of several weeks, typically via detailed logs of judge time during the workday on all activities and specific types of cases.
4. Calculate the number of days per year and minutes per day that judges have to do case-related work.
5. Estimate the case weights, that is, how much time judges spend on average for cases of particular types.
6. Using current caseloads, determine how many judges are needed for current caseload.
7. Use these same methods to calculate the estimated number of judges needed for each district.
8. Adjust calculations to reflect individual district needs, such as the time spent traveling to courtrooms in geographically large districts.

Case weights are the average time judges spent on a specific case type. This average includes all cases, even those on which judges spent little or no time. Many cases take more time than the average, some much more, and many others take less time. Similarly, judges work at different paces. Nevertheless, the weighted caseload analysis reflects the average time spent on cases.

Experts endorse weighted caseload studies as the best method for estimating the need for judges.

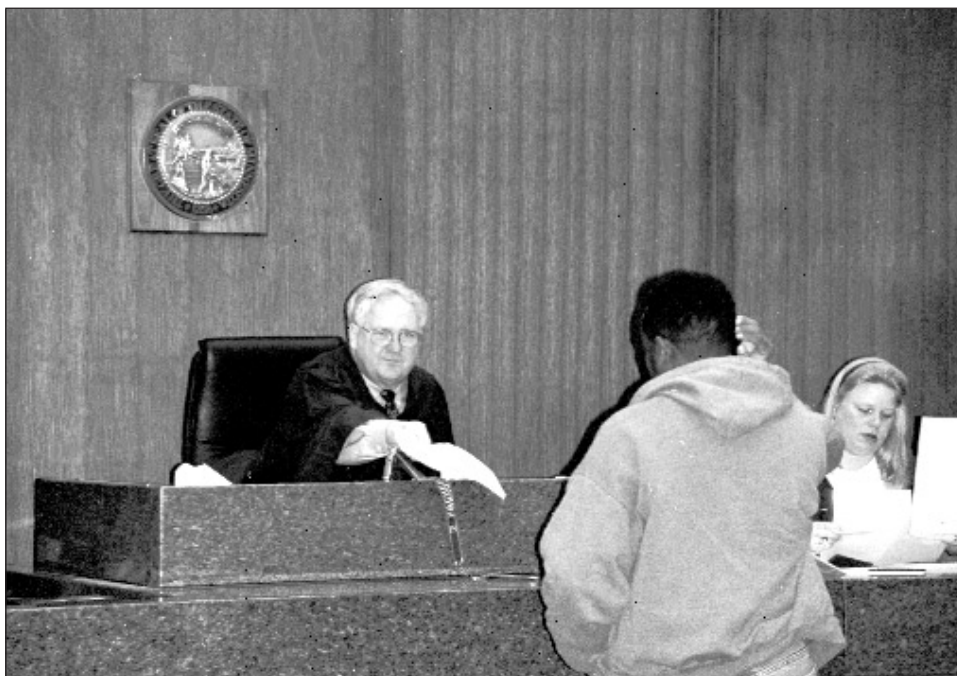
¹ Victor Flango and Brian Ostrom, *Assessing the Need for Judges and Court Support Staff*, (National Center for State Courts, 1996), 14.

MINNESOTA'S USE OF WEIGHTED CASELOAD STUDIES

Minnesota last conducted a comprehensive weighted caseload study in 1992.

Minnesota first used a weighted caseload analysis in 1980. Due to structural changes in the court process and changes in case types, the State Court Administrator's Office completely redid the study in 1986 and again in 1992. In 1998, relying on a process managed by the National Center for State Courts, the State Court Administrator's Office updated 6 of 49 case types. Significant changes since 1992 to laws affecting these six case types warranted their selection for updating. In its work, the National Center for State Courts followed a procedure known as a Delphi study, which is based on expert judgment of a panel of judges to estimate the length of new hearings required for certain case types. These estimates of time, together with changes in the number of hearings and trials, were used to update case weights for the six case types. Based on the 1998 study, the judiciary requested 18 new judgeships, and the Legislature approved 13 in 1999.

With the exception of the six case types singled out in the 1998 study, the average number of minutes for many cases declined between 1980 and 1992. In some instances, a decrease may reflect procedural changes, such as a change in 1992 that resulted from counting civil cases from the time of filing rather than from the time of activation.² In other instances, the average time per case may have



A weighted caseload analysis accounts for the judge time needed to dispose of different types of cases.

² "Activation" refers to counting a case only if there is some court activity. Courts that intervened earlier in civil cases tended to activate a larger share of their civil caseload and judge need was overstated for some courts. Wayne Kobbervig, State Court Administration, *Minnesota Weighted Caseload 1992* (St. Paul, October 1993), 18.

declined due to the impact of an increasing workload together with the need to dispose of cases within a specific time limit.

Table 3.1 compares the changes in select case weights for the 1986 and 1992 weighted caseload studies. Relative to each other, the case weights seem reasonable: serious felony cases took the most judge time at 665 minutes on average in 1992; parking offenses required the least time at an average of less than a minute per case. The table also shows that workload cannot be characterized by a simple count of filings. For 1992, serious felonies represented only 0.1 percent of all filings but 5.1 percent of the judicial workload. Table 3.2 shows the weights for the six select case types updated in 1998.

The number of judges needed to process the caseload statewide is calculated using the case weights, number of filings, and a measure of the time judges have available to process cases. The estimated number of judges may change for several reasons. First, case weights may increase or decrease. Second, adding a judge in certain districts may decrease the need for travel time, increasing the average amount of time per day that judges have to hear cases in that district. A

Table 3.1: Select Case Weights (Average Minutes per Case) from Minnesota Weighted Caseload Studies for 1986 and 1992

Case Type	1986 Average Minutes per Case	1992 Average Minutes per Case	Percentage Change 1986 to 1992	Percentage 1992 Filings	Percentage 1992 Workload
Serious Felony	(unavailable)	664.9		0.1%	5.1%
Other Felony	(unavailable)	119.7		0.8	9.0
Felonies (total)	178.0	169.4	-4.8%	0.9	14.1
Gross Mis- demeanor DUI	(unavailable)	56.0		0.5	2.5
Gross Mis- demeanor Other	(unavailable)	42.5		0.5	2.3
Gross Mis- demeanors (total)	63.6	49.2	-22.6	1.0	4.8
Personal Injury	292.5	292.4	0.0	0.3	9.1
Contract	255.6	188.9	-26.1	0.4	6.7
Guardianship	163.9	126.1	-23.1	0.1	1.6
Commitment	211.2	226.8	7.4	0.2	3.6
Dissolution with Children	(unavailable)	182.3		0.5	9.3
Dissolution without Children	(unavailable)	63.1		0.4	2.3
Dissolution (total)	143.3	133.2	-7.0	0.9	11.6
Domestic Abuse	42.0	36.8	-12.3	0.6	2.2
Parking	0.2	0.1	-59.0	40.1	0.3

NOTE: The table reports 12 of 49 case types. Workload is calculated by multiplying case weights by the number of filings for that case type.

SOURCES: 1992 data from Wayne Kobbervig, State Court Administration, *Minnesota Weighted Caseload 1992* (St. Paul, 1993), 16, 34; 1986 data from Wayne Kobbervig, Office of the State Court Administrator, *1986 Minnesota Weighted Caseload Study* (St. Paul, April 1987), 35.

Table 3.2: Case Weight Changes for Six Case Types Studied in 1998

Case Type	1986 Average Minutes per Case	1992 Average Minutes per Case	Percentage Case Weight Change 1986 to 1992	1998 Average Minutes per Case	Percentage Case Weight Change 1992 to 1998
Status Offense	—	11.7	—	13.0	11%
Dependency/ Neglect of Children	147.6	148.9	0.9%	190.0	28
Termination of Parental Rights	96.3	149.5	55.2%	248.0	66
Implied Consent	73.6	72.4	-1.6%	96.0	33
Fifth Degree Assault	—	20.5	—	24.0	17
Misdemeanor DWI	—	11.3	—	13.0	15

NOTE: These six case types were selected for updating in 1998 because law changes since 1992 had increased the number and length of required hearings and because of substantial growth in the rate of hearings and trials for many of these case types.

SOURCES: 1992 data from Wayne Kobbervig, State Court Administration, *Minnesota Weighted Caseload 1992* (St. Paul, 1993), 16, 34; 1986 data from Wayne Kobbervig, Office of the State Court Administrator, *1986 Minnesota Weighted Caseload Study* (St. Paul, April, 1987), 35; 1998 weights from a data file containing filings, case weights, and judge need for 1996 through first quarter 2000 from the State Court Administrator's Office.

third factor is the total number of days judges have to hear cases. Between 1986 and 1992, the number of judicial education days decreased from ten to five and the number of holidays increased by one, giving judges four more days to hear cases. Authors of the 1992 study estimated that this factor alone reduced the estimated number of judges needed by five.³

The district courts' 2002-03 biennial budget includes a request for nine new judges, law clerks, and court reporters.

In 2000, the State Court Administrator's Office estimated a need for 294.57 full-time equivalent judges, based on the number of cases in 1999.⁴ This is nearly the same as the number of 294.24 full-time equivalent judges expected in January 2001. However, the Conference of Chief Judges approved a budget request that includes nine additional judge units (one unit is a judge, law clerk, and court reporter) over the upcoming 2002-03 biennium. Its request includes five judgeships that were not approved in the 1998 request, two judgeships to account for growth in case filings since 1998, and two judgeships to meet anticipated growth in case filings during the 2002-03 biennium in the First District (south metropolitan Minnesota) and Tenth District (north metropolitan and east central Minnesota).

³ Kobbervig, *Minnesota Weighted Caseload 1992*, 19.

⁴ State Court Administrator's Office, "Equalizing Workload by District - Calculated Distribution January - June 2001," working document, May 19, 2000. This estimate includes referees in the Second District (Ramsey County) and Fourth District (Hennepin County) and a judicial officer in the Sixth District (northeastern Minnesota). It does not include adjustments such as adding judges to provide sufficient public access to court resources in large districts, as described later in this chapter.

Court Observations on Weighted Caseload

According to our interviews, chief judges and district administrators around the state almost uniformly think that the weighted caseload study is an important and necessary tool, yet they agreed there is room for improvement. Many judges said the weighted caseload results often underestimate the need for judges because they rely on filings data that may be old by the time the Legislature considers requests for more judge positions. Accordingly, some judges have advocated projecting estimates of future filings. Their intent is to better reflect the caseload at the time the need for judges is actually being considered. Although statistical models exist to estimate future caseloads, the uncertainty involved with such estimates reduces their accuracy and usefulness.

Most chief judges agreed that the weighted caseload study is an important tool, but it needs to be improved.

Many chief judges indicated the study should include an assessment of how much time a particular case *should* take, as opposed to the time it actually takes. They are concerned that the weighted caseload study addresses only the efficiency of case processing and ignores the concept of quality outcomes. This issue was also raised in the 1992 weighted caseload study.⁵ If caseloads increase substantially without an increase in the number of judges, and judges try to meet timing objectives for disposing of cases, then the amount of time available for processing each case will decline. When applying these lowered case weights to current filings, it may incorrectly appear that judicial resources are adequate.

How Judges Spend Their Time

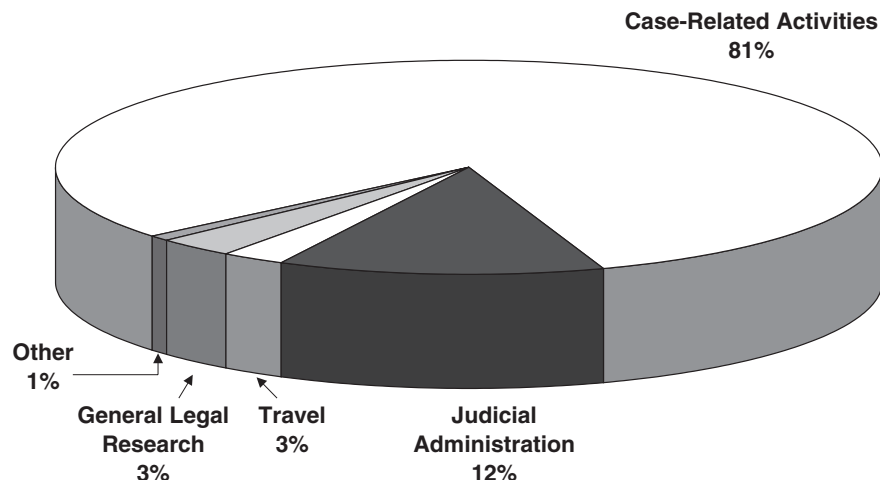
As mentioned earlier, the weighted caseload study is based in part on the amount of time judges have available to spend on cases. For Minnesota's study, the State Court Administrator's Office calculated the amount of available judge time from records of how judges spent their time for a sample period. However, these data are from the 1992 weighted caseload study, which is now more than eight years old. Other possible sources of information, such as judge timesheets, do not record how judges used their time, according to the State Court Administrator's Office. We found that:

- **No current data exist to describe the extent of time judges spend on their various tasks. Available information is dated and may not apply well to judges today.**

For the 1992 weighted caseload study, all judges recorded their work time, both on and off the bench, for a nine-week period. They distinguished between time spent on specific cases and noncase-related time. Of the calculated total number of judge minutes available in a day for 1992, an average 81 percent was spent on case activities and 19 percent on noncase-related activities, as shown in Figure 3.1.⁶ Judicial administration, such as committee meetings or judge meetings in the district, represented two-thirds of the noncase-related activities. General legal research and travel each accounted for 3 percent of judge time, and all other noncase activity was 1 percent.

⁵ Kobbervig, *Minnesota Weighted Caseload 1992*, 23.

⁶ Kobbervig, *Minnesota Weighted Caseload 1992*, 11.

Figure 3.1: Average Daily Judge Time, 1992

SOURCE: Office of the Legislative Auditor's analysis of data from Wayne Kobbervig, State Court Administration, *Minnesota Weighted Caseload 1992* (St. Paul, 1993), 3, 11.

The proportion of time spent on noncase-related activities in 1992 was similar to those from two earlier weighted caseload studies conducted in 1980 and 1986. During that 12-year span, the number of average minutes judges spent per day on noncase-related activities declined 8 percent, from an average 93 minutes per day in 1980, to 92 minutes in 1986, to 86 minutes in 1992. Although it is possible that these trends would continue to the present, we cannot predict that absent an updated study of judge time.

GUIDELINES FOR EFFECTIVE WEIGHTED CASELOAD STUDIES

The National Center for State Courts has published materials on weighted caseload studies, including a list of 12 guidelines for conducting such studies. We found:

- **Minnesota's weighted caseload studies have conformed to many, but not all, of the accepted guidelines for conducting these studies.**

Of the 12 guidelines, Minnesota has met 8, as described in Table 3.3. Minnesota's studies emphasize statewide standards, preestablished criteria, limited modifications to calculations from the model, data from local jurisdictions, weighted filings, calculation of available judicial time, ongoing analysis of the distribution of judges, a single set of case weights with minimum modifications, and consideration of access needs by county.

Table 3.3: Guidelines for Assessing the Need for Judges and Court Support Staff

Guideline	Minnesota Judiciary's Efforts to Meet the Guideline
1. The need for judicial and court staff positions should be assessed against (a) measures of demand for service, (b) statewide standards of judgeship needs, and (c) effective use of existing resources.	✓ Minnesota uses an objective and rational study.
2. The number of judgeship and court support staff positions required should depend upon satisfying preestablished criteria. The criteria should be established by the state court administrative office prior to the analysis of need in any particular locality and should include consequences to the public of not adding judges or court support staff.	✓ Minnesota's study sets criteria in advance.
3. After a decision on judgeship and court support staff needs is made, the burden of proof for any modification should rest upon those advocating a contrary position, whether they be members of the judicial, legislative, or executive branches of government.	✓ The judiciary has allowed a limited number of changes based on special needs.
4. Local courts should provide the data necessary to assess the need for judges and court support staff on a regular basis. Statutes or court rules should specify a clear set of definitions and the data elements required to produce the assessment measures.	✓ Most case data come from a single information system, and state court staff reassess judge need quarterly.
5. The best direct measure of demand for judges and court support staff is the number of weighted filings, tempered by qualitative considerations.	Minnesota uses weighted filings but weights reflect all practices, not the best practices. The study is no longer current.
6. Existing resources should be evaluated in terms of a standard year and full-time equivalent hours per day for judges and support staff.	✓ The judiciary sets a standard year and the time analysis defines available time per day.
7. Before new judges or court support staff are requested, the current distribution of caseloads should be examined to ensure the existing judges and court support staff are allocated equitably among jurisdictions.	✓ The judiciary has authority for judge reassignments.
8. The need for judges, quasi-judicial officers, and court support staff should be assessed together if at all possible, because addition of one type of court personnel may affect the overall need for resources. Without the proper type and level of support, judges may be forced to perform some tasks that could be delegated to qualified support staff.	There is no statewide weighted caseload analysis of the need for court support staff.
9. A single set of case weights for judges and for court support staff within a state is preferable. Weighted caseload studies, however, should evaluate differences in time requirements or case mix across courts of different sizes to determine if separate weights are needed.	✓ Available judge time is adjusted to reflect travel differences; other possible factors are assessed.
10. Simulation can be used in concert with other criteria to determine how to make the best use of existing judges and court support staff.	Minnesota has not used simulation, but this has a lower priority and is costly.
11. One necessary step in assessing the need for judges and court support staff should be an independent review of whether a court appearing to need additional judges could reduce or eliminate the apparent need through operational changes. Part of that review should include opportunities for input from local judges, members of the bar, local elected representatives, and citizens knowledgeable about the operations of the court.	✓ State Court administration increases judge need estimates to add "access" in four districts.
12. Qualitative adjustments to quantitative criteria used to assess the need for judges and court support staff should themselves be evaluated. If criteria require frequent adjustment after the on-site review, the quantitative criteria may need to be changed.	Minnesota has not systematically made qualitative adjustments.

NOTE: Checkmarks indicate Minnesota has taken steps to meet the guideline.

SOURCE: Office of the Legislative Auditor's analysis of Victor Flango and Brian Ostrom, *Assessing the Need for Judges and Court Support Staff*, (National Center for State Courts, 1996), viii-ix.

On the other hand, Minnesota has not met key components in four important areas: incorporating significant qualitative factors into the analysis, highlighting efficient practices, estimating court support staff, and updating the study on a timely basis. These are explained below.⁷

Improving Minnesota's Weighted Caseload Study

Minnesota should incorporate qualitative measures into its weighted caseload study.

One guideline from the National Center for State Courts that Minnesota has not fully met recommends including qualitative analyses in addition to the purely quantitative analyses that weighted caseload studies supply.⁸ Some studies have considered the importance of accounting for differences in the local legal culture of different courts, including attitudes and norms about how cases should be handled.⁹ For example, because of local differences, public defenders may be assigned to a broader range of cases in some courts than in others. In preparing for the next weighted caseload study, the Judicial Resources Allocation Subcommittee of the Conference of Chief Judges is discussing adding qualitative factors, such as measures of interagency effects on court workload.

As part of Minnesota's 1992 study, the State Court Administrator's Office adjusted the number of judges needed in two ways that conform to the guidelines discussed above. First, in keeping with Guideline 7, fractions of judges were rounded up to the next whole judge in most districts to avoid the assignment of fractional judges to districts. For example, in the Sixth District (northeastern Minnesota) the number of judges was originally calculated as 14.46 but was rounded up to 15.¹⁰ Second, consistent with Guideline 11, four geographically large districts (the Third, Fifth, Eighth, and Ninth districts representing much of southern, western, and northwestern Minnesota) were each given one additional judge to provide adequate citizen access to court resources.¹¹ For 1992, these changes resulted in the addition of six judges to the number calculated from the weighted caseload study. Such adjustments are useful, but differ from qualitative factors that reflect local differences.

To avoid creating weights that simply embody existing practices, as opposed to efficient practices, a second guideline from the National Center for State Courts recommends collecting data from only the most productive courts, that is, those courts that balance the concerns of timeliness and quality outcomes.¹² In Minnesota, the weighted caseload analyses collected data on judge time from all

⁷ Minnesota also does not meet the guideline for using simulation procedures, but these generally have extensive data requirements and can be costly. We concluded that this guideline is less compelling than the others.

⁸ Flango and Ostrom, *Assessing the Need for Judges*, 123-124.

⁹ Steven Hays and Cole Blease Graham, Jr., *Handbook of Court Administration and Management* (New York: Marcel Dekker, Inc., 1993), 473.

¹⁰ There were two exceptions to the rounding. Judge need was rounded up to 31.5 instead of 32 in the Second District (Ramsey County) and was rounded down from 34.13 to 34.1 in the Tenth District (north metropolitan and east central Minnesota).

¹¹ Two of the four districts were given two additional judges following the 1986 weighted caseload analysis.

¹² Flango and Ostrom, *Assessing the Need for Judges*, 22.

courts and then applied these statewide averages to cases. This practice helps avoid institutionalizing the status quo in less productive districts; they are held to the higher standard of the statewide average. Districts at or above the statewide average, however, have no goal to which they can aspire. Because the weights are averages, they do not represent the practices that best demonstrate expeditious case disposition combined with justice. Further, collecting data from all courts presents a large data collection burden.

A weighted caseload analysis is necessary to estimate the need for court support staff.

A third guideline of the National Center for State Courts recommends using weighted caseload studies to determine the need for court clerks and support staff.¹³ Assessing the need for judges and court support staff is important because changes to either may affect the overall need for resources.¹⁴ Case weights for estimating support staff needs will likely differ from those for judges. For example, for minor criminal cases, caseloads may require more support staff time than judge time.

Minnesota does not use a weighted caseload study to determine support staff needs, although the state-funded Eighth District (west central Minnesota) developed such a study for its support staff. The Fifth District (southwestern Minnesota) has adapted parts of the Eighth District's model for its own use.

Finally, a fourth guideline from the National Center recommends periodic updating of weighted caseload studies.¹⁵ The State Court Administrator's Office and the Conference of Chief Judges have suggested that the courts should redo the weighted caseload analysis again because most case weights are nearly a decade old and several procedural changes in the interim have made it likely that particular case weights have changed. The 1998 Delphi study updated select case weights based on expert opinion that changes in judicial practice increased the time needed to process those cases, but this affected only 6 out of the 49 case types in the weighted caseload study. Because Minnesota's last comprehensive weighted caseload study occurred in 1992, an update is overdue.

RECOMMENDATION

The State Court Administrator's Office should conduct an updated, comprehensive weighted caseload study.

A weighted caseload analysis requires periodic updates.

As mentioned earlier, a weighted caseload study is the best method to provide critical information to help the judiciary and the Legislature make informed decisions. However, to retain credibility, the study must reflect current court practices.

¹³ Flango and Ostrom, *Assessing the Need for Judges*, 55.

¹⁴ It can be argued that the workload for public defenders or prosecutors is also related to the judicial workload. However, attorney staffing is not tied to estimates for judges in Minnesota. Public defenders use a weighted study to estimate target workloads: one public defender for every 150 felony cases, or 275 gross misdemeanor cases, or 400 misdemeanor cases, or 80 juvenile welfare cases, or 175 juvenile cases, or 200 other cases in any year. Caseloads for public defenders around the state exceed this standard for the number of public defenders available. (Minnesota Department of Finance, *Minnesota 2000-01 Biennial Budget*, (St. Paul, 1999), H-98.)

¹⁵ Flango and Ostrom, *Assessing the Need for Judges*, 21-22.

An updated weighted caseload study will require additional money, although certain steps, such as sampling data, can help minimize costs. The Conference of Chief Judges approved a budget request of \$250,000 for the next study. To offset part of this expense, the State Court Administrator's Office has submitted a grant proposal to the State Justice Institute for about \$90,000 to study how certain local legal practices, such as the availability of public defenders for juveniles, affect court workloads.

In planning for a new study the State Court Administrator's Office should supplement its calculation of weighted caseload with qualitative factors most likely to affect local court workloads. To ensure credibility, qualitative factors should be carefully chosen and explicitly defined. Using too many qualitative factors or using factors that have not been demonstrated to affect caseloads could undermine the credibility of the entire weighted caseload analysis. Yet, ignoring all qualitative factors paints an unrealistic picture of judge need.

The State Court Administrator's Office should also consider collecting time records for the caseload study from only the most productive courts. This would mean identifying courts that best meet timing guidelines while maintaining justice and equity. We understand that it may be difficult to identify the most productive courts, and we are unaware of any other states that have done so in their weighted caseload analyses. At the same time, doing so reduces the burden involved with collecting time records from all district judges. Further, focusing on the most productive courts provides a goal to which other courts may aspire instead of merely reflecting statewide average practices. The State Court Administrator's Office should weigh the advantages and disadvantages of using this strategy.

Finally, as the state moves closer to full state funding for the courts, it will be important to objectively determine an appropriate number of court staff. If and when all Minnesota district courts become state funded, the State Court Administrator's Office should use weighted caseload analyses to estimate court support staff needs. A statewide weighted caseload study for support staff will mean an additional cost. Using an objective method to determine needs for support staff, however, will help promote equity in allocating resources statewide.

RETIRED JUDGES

To make up for temporary shortages of judges, some judicial districts receive funds to hire retired judges on a part-time basis. State statutes allow the Chief Justice of the Supreme Court to assign a retired judge to act as a district court judge.¹⁶

The Need for Retired Judges

In its weighted caseload analysis, the State Court Administrator's Office determines where the need for retired judges is greatest. Based on an amount of retired-judge money approved each year by the Conference of Chief Judges, the

¹⁶ *Minn. Stat.* (2000) §2.724, subd. 3.

Judicial districts with the greatest shortage of judges receive some help from retired judges.

State Court Administrator's Office adds retired-judge days to districts with the greatest shortage of judges. Together, the retired-judge days and a district's own judges represent that district's judicial resources.

With approval from the Conference of Chief Judges, the State Court Administrator's Office then adjusts each district's judicial resources through a process known as "equalization." Under equalization, those judicial districts with the greatest shortage of judges receive judge resources from other districts.¹⁷ Judicial districts required to send judicial resources elsewhere may do so either by having a judge travel there for a predetermined number of days or by allotting sufficient funds to pay for the use of retired judges in the receiving district. Although some districts find it slightly more costly to transfer money for a retired judge than to send one of its own judges, they do so because of their own caseload needs.

In the last five fiscal years, four of the ten judicial districts consistently received equalization judges or funds for retired judges: the First District (south metropolitan Minnesota), Seventh District (north central Minnesota), Ninth District (northeastern Minnesota), and Tenth District (north metropolitan and east central Minnesota). In addition, the Fourth District (Hennepin County) received retired judge money for two of these five years, and the Third District (southeastern Minnesota) for one of them.

Over the past five fiscal years, the money budgeted for retired judges varied between \$121,462 and \$310,098 statewide. Of that, the State Court Administrator's Office used between \$100,000 and \$200,000 to assign retired-judge days to districts most short of judges.

The remaining portion of the money is for other uses of retired judges during the year. When judges spend time at Judicial College or judges teach courses for others, the district qualifies for money in an amount equivalent to the time spent. Judicial districts can use that money to hire retired judges.

Should prolonged illnesses or other unexpected judge absences occur later in a year, districts may adjust their individual budgets to hire retired judges. For example, they may use salary savings from vacant positions. However, when a judge retires or dies, the district is allowed to use only 25 percent of the salary savings for this purpose. The Conference of Chief Judges agreed on the 25 percent figure because of insufficient resources to reimburse a larger share.

Benefits and Drawbacks of Using Retired Judges

Districts that frequently use retired judges reported that they are grateful for the assistance. We learned from chief judges and district administrators in these districts that:

- **Retired judges can be a valuable resource, and without their help districts would expect increasingly serious backlogs.**

¹⁷ Further equalization of judge resources across the state may occur each year. For instance, in years when the Second District heard all tort cases for breast-implant litigation, which benefited other districts, judge allotments were adjusted to recognize this expenditure of Second District judges' time.

At the same time, chief judges and district administrators said that both the dollars for hiring retired judges and the supply of retired judges willing to work are insufficient. Districts said that they would use more retired judges if given the money to do so. About one-third of the 112 retired judges are actively taking assignments in District Court, according to a June 2000 report of the Conference of Chief Judges.¹⁸ In a given district, however, the number of retired judges who are willing to come back to the bench may be minimal or nonexistent. These numbers may decrease even further in winter months when many retirees temporarily leave Minnesota for warmer climates.

About one-third of retired judges currently take assignments in district courts.

We also heard about some minor inconveniences of using retired judges. Retired judges who come in from outside a district may not be familiar with that district's procedures, such as those for handling arraignments or setting sentences. They may need additional time or technical assistance to adapt to district procedures. Further, retired judges may lack the expertise or desire to handle certain calendars, which forces a district to adjust other full-time judges' calendars to meet the given needs. Finally, a district may not have the requisite support resources, such as a law clerk, clerical support, or office space, for retired judges to conduct their work.

Of larger concern to chief judges and district administrators, however, was the issue of compensation for retired judges. According to statute, pay for retired judges amounts to the difference between the judge's retirement pay and the legislatively set salary paid to all district court judges.¹⁹ This arrangement ensures that retired judges earn no more in combined pension and pay per day than full-time district judges earn per day. It means, however, that pay for retired judges is a function of their retirement benefits, not just the work they perform when they come out of retirement. We found that:

- **The larger a retired judge's pension, the smaller pay that judge receives.**

Pay for retired judges varies from \$12 to \$333 per day, according to the Conference of Chief Judges.

In its June 2000 report, the Conference of Chief Judges concluded that the method of compensating judges is inequitable and should change. It proposed that the Supreme Court, not the Legislature, have authority for determining compensation. Further, it concluded that a new formula, based on a percentage of a full-time judge's salary, should be used to set a uniform per diem wage for retired judges.

RECOMMENDATION

The Legislature should consider making the pay for retired judges uniform.

¹⁸ Minnesota Conference of Chief Judges, *Retired Judge Usage* (St. Paul), June 22, 2000.

¹⁹ *Minn. Stat.* (2000) §2.724, subd. 3(a).

Uniform pay for retired judges would be more equitable and provide an incentive for more of them to serve.

Changing pay for retired judges would require amending *Minnesota Statutes* §2.724, subd. 3(a). More equitable payments to retired judges is, first, a matter of fairness. Currently, retired judges earn different amounts solely because the length of time they served as full-time judges determines their retirement pay. Second, encouraging retired judges to accept work is beneficial to the state because retired judges represent a cost-effective way to manage short-term judge shortfalls in districts. It is in Minnesota's best interest to provide incentives so that retired judges are available and willing to work in every district. A more equitable pay structure could help promote this objective.