

Balancing Timeliness and Justice

SUMMARY

Delay in the processing of cases is not a serious problem in Minnesota's district courts, although it occurs for some types of cases. Judges and attorneys we surveyed tended to believe that Minnesota courts are usually able to process cases efficiently without sacrificing justice and equity. They also felt, however, that judges need to spend more time on cases if people are to feel that their concerns are fully heard. Districts employ different strategies to schedule and manage cases, and they have increasingly relied on technological improvements to help manage their caseloads.

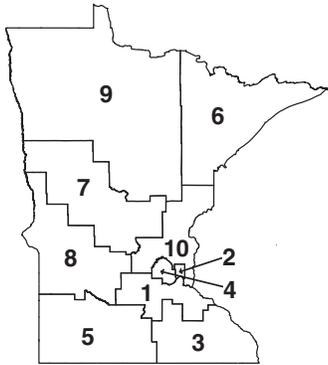
The previous chapter indicated that Minnesota's district courts have generally been able to keep pace with their caseloads and resolve most cases in a timely way. In addition to expediency and timeliness, the guiding principles for the Trial Court Performance Standards include "access to justice" and "equality, fairness and integrity."¹ This means in part that trial courts should provide an opportunity for all who appear in court to participate effectively. It also means that trial courts should give individual attention to cases. According to national experts, high levels of both timeliness and quality outcomes are hallmarks of well-managed courts.² In this chapter we focus on the need to balance timeliness with quality outcomes. Specifically, we ask:

- **Do judges and attorneys believe that the courts are able to process cases efficiently without sacrificing equity and justice?**
- **What do judges and attorneys say are the most important factors that contribute to court delay? Is delay viewed as more of a problem in some judicial districts than in others? What new issues face the courts today that may not have affected case flow in the past?**
- **How do courts manage their case flows? What technological and other initiatives have courts taken to improve case processing?**
- **What suggestions do judges and attorneys have for improving case processing?**

To answer these questions, we mailed questionnaires to all district court judges and to a sample of attorneys and asked them about the extent of delay and the

¹ Pamela Casey, "Defining Optimal Court Performance: The Trial Court Performance Standards," *Court Review* (Winter 1998): 25.

² Brian Ostrom and Roger Hanson, *Efficiency, Timeliness, and Quality: A New Perspective from Nine State Criminal Trial Courts* (National Center for State Courts, 1999), 107-113.



factors that contribute to delay. We received timely responses from 215 judges, or 85 percent of the 252 judges to whom we mailed questionnaires. For the attorneys, we sent questionnaires to all 87 county attorneys, a sample of 200 city attorneys, a sample of 200 public defenders, and a sample of 364 private attorneys. We received responses from 77 county attorneys (89 percent), 138 city attorneys (73 percent), 133 public defenders (71 percent), and 229 private attorneys (67 percent). Overall, we received responses from 577 of the 804 attorneys to whom we sent the questionnaire (72 percent). We also surveyed court administrators in each county about case management and other court operations. Of the 89 court administrators (including 2 deputy court administrators in St. Louis County) we received responses from 84, for a 94 percent return rate. Appendix A contains additional information on our survey methodology.³

In addition to the surveys, we interviewed the chief judges and district administrators in all Minnesota judicial districts and asked them about case scheduling and management. We also observed courts in session and talked informally with judges from the First, Second, Fourth, Seventh, and Ninth judicial districts to get first-hand knowledge of the day-to-day operations of the courts.

PROCESSING CASES EFFICIENTLY WHILE PRESERVING JUSTICE

In our survey of judges, we asked about the efficiency of case processing, preserving justice, and the extent of delay. We requested that judges answer separately for criminal, juvenile, family, civil, and probate cases. We found that:

- **For the most part, judges believe that they are able to manage cases efficiently without sacrificing justice and equity.**

Figure 5.1 shows the percentage of judges agreeing or strongly agreeing with the statement, “most cases are processed in a timely manner.” Depending on the type of case, between 76 percent and 93 percent of judges said that cases are being processed in a timely manner.⁴

Furthermore, Figure 5.2 shows that, depending on the type of case, between 69 percent and 83 percent of judges agreed or strongly agreed with the statement, “courts generally manage caseloads efficiently while preserving justice and equity.” Slightly fewer judges agreed with the statement for family cases than for other types of cases.

In our survey of attorneys, we asked similar questions about case processing, preserving justice, and delay. We found that:

- **Attorneys generally believe that courts manage cases efficiently without sacrificing justice and equity.**

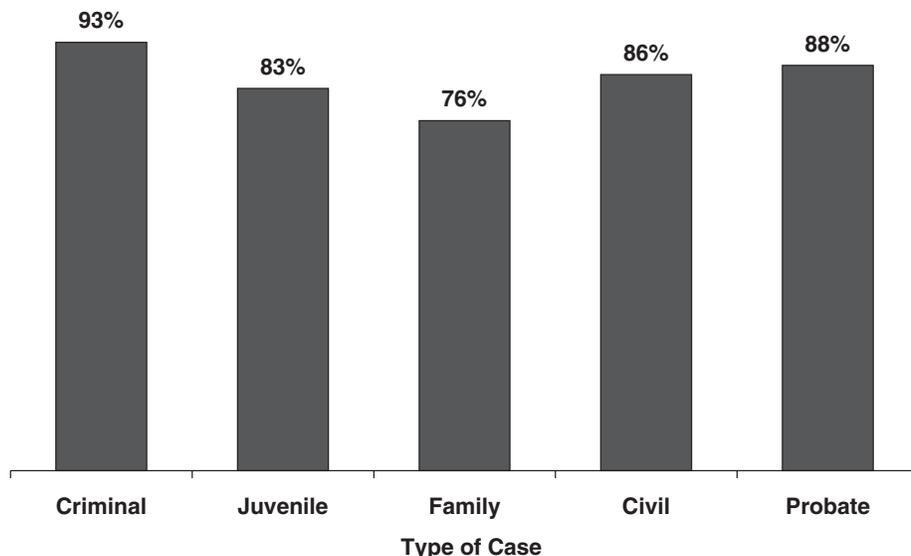
Majorities of judges and attorneys believe the courts balance efficiency and justice.

³ Aggregate results from the surveys are available at our web site: <http://www.auditor.leg.state.mn.us/ped/2001/pe0102.htm>.

⁴ All percentages cited in this chapter are based on the number of individuals responding to the question, excluding those who responded “don’t know.”

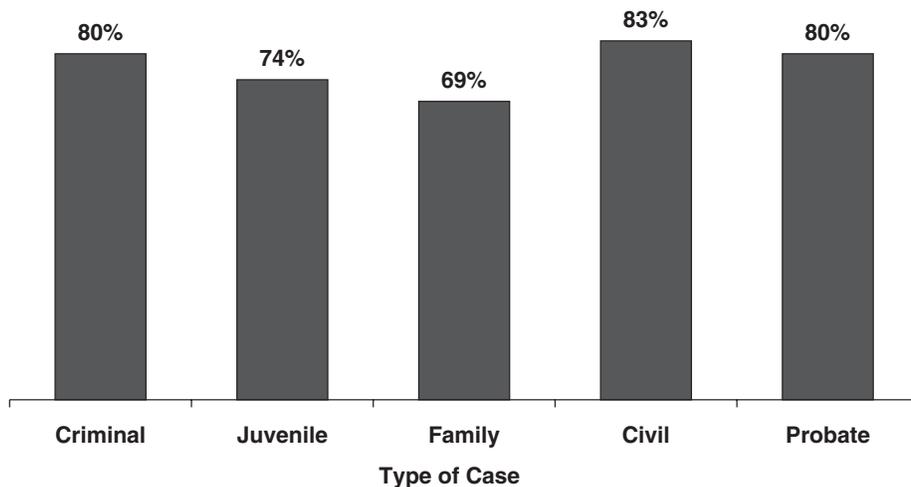
Figure 5.1: Judges Agreeing or Strongly Agreeing that Cases are Processed in a Timely Manner, 2000

Most judges said that all types of cases are processed in a timely way.



SOURCE: Office of the Legislative Auditor's survey of district court judges, 2000.

Figure 5.2: Judges Agreeing or Strongly Agreeing that Courts Generally Manage Caseloads Efficiently While Preserving Justice and Equity, 2000

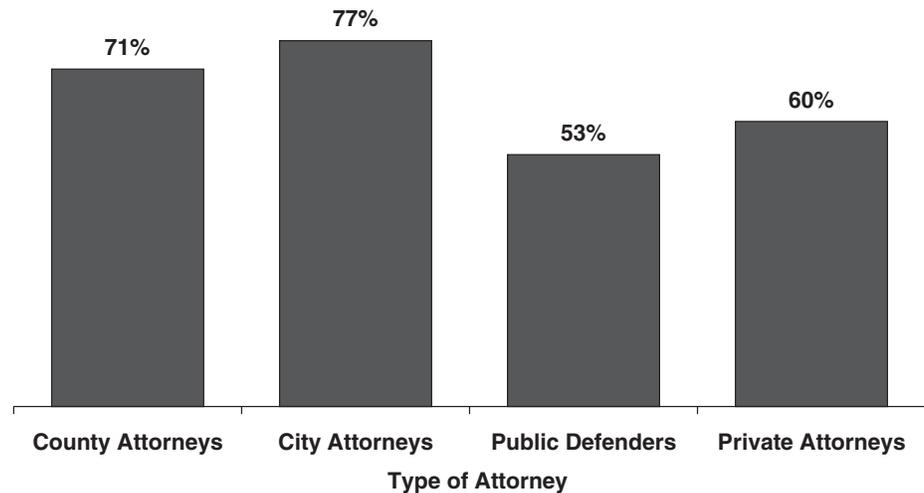


SOURCE: Office of the Legislative Auditor's survey of district court judges, 2000.

Nearly two-thirds of all attorneys surveyed (65 percent) said that courts always or usually manage their caseloads efficiently. Prosecutors (city and county attorneys) were more likely to share this view than public defenders and private attorneys. Moreover, among all types of attorneys, 64 percent said that courts always or usually balance the need for managing cases efficiently while preserving justice and equity, 26 percent said that courts sometimes do this, and 10 percent said they seldom or never do so. Figure 5.3 illustrates that a majority of all types of attorneys reported that courts always or usually balance the need for efficiency with preserving justice and equity. Prosecutors were more likely to share this opinion than were private attorneys or public defenders.

Figure 5.3: Attorneys Who Said that Courts Always or Usually Balance the Need for Efficiency with Preserving Justice and Equity, 2000

Prosecutors were more likely than other attorneys to say that courts always or usually balance efficiency and justice.



SOURCE: Office of the Legislative Auditor's survey of attorneys, 2000.

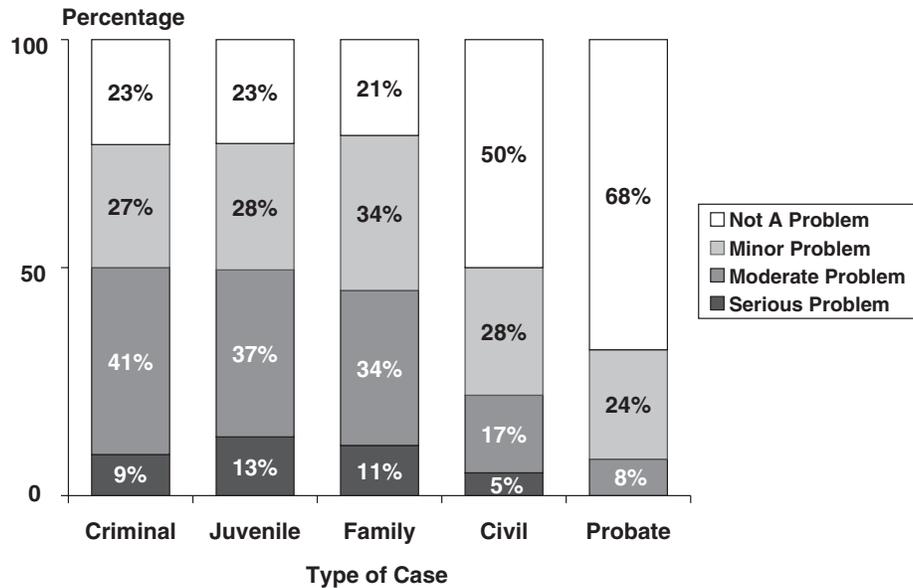
EXTENT OF DELAY

We asked judges to rate the extent to which case processing delay is a problem in their judicial district. We found that:

- **Small percentages of judges reported that delay is a serious problem in their district regardless of case type, but higher percentages of judges saw delay as a moderate problem for criminal, juvenile, and family cases.**

Figure 5.4 shows that few judges view delay as a serious problem. However, half of the judges said that delay is either a serious or moderate problem in criminal and juvenile cases and 45 percent of the judges said the same for family cases. Further, about 39 percent of judges agreed or strongly agreed with the statement,

Figure 5.4: Judge Opinions on the Extent to Which Delay is a Problem in Case Processing, 2000

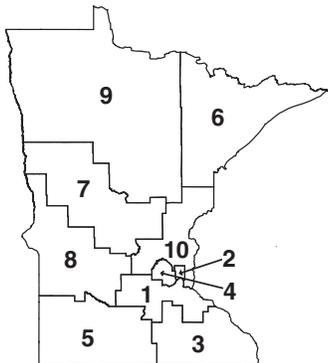


Few judges viewed delay as a serious problem.

SOURCE: Office of the Legislative Auditor's survey of district court judges, 2000.

“judges have to spend too much time waiting rather than hearing cases” in relation to criminal and juvenile cases. At the same time, only 22 percent of the judges responded that delay is either a serious or moderate problem in civil cases. No judges said that delay is a serious problem in probate cases and only 8 percent said it is a moderate problem.

From district to district, judges’ opinions on delay were mixed. Table 5.1 presents the findings on delay for each of Minnesota’s ten judicial districts. In four districts (First, Second, Fifth, and Tenth), a majority of judges said delay is minor or not a problem for all case types. In four other districts (Sixth, Seventh, Eighth, and Ninth), judges’ opinions on delay were nearly evenly split in criminal and juvenile cases, with roughly half seeing delay as a moderate or serious problem, and the other half as minor or not a problem. In the remaining two districts (Third and Fourth), strong majorities of judges viewed delay as moderate or serious for criminal, juvenile, and family cases. For example, 78 percent of the Third District judges and 66 percent of the Fourth District judges responded that delay is a serious or moderate problem in criminal cases.



Judges from the Third, Sixth, and Seventh districts were more likely than judges from other districts to say that delay is a problem for civil cases. A majority of judges from all ten districts said delay was a minor problem or not a problem in processing probate cases.

We also asked attorneys to rate the extent to which delay is a problem in their judicial district. We found that:

Table 5.1: Judges Responding That Delay is a Serious or Moderate Problem in Processing Cases, by Type of Case and Judicial District, 2000

District	Type of Case				
	Criminal	Juvenile	Family	Civil	Probate
First (25 judges)	38%	37%	25%	17%	0%
Second (23 judges)	27	36	25	0	0
Third (18 judges)	78	78	78	73	29
Fourth (48 judges)	66	75	78	5	0
Fifth (14 judges)	31	38	8	8	9
Sixth (13 judges)	50	50	58	50	13
Seventh (19 judges)	58	47	47	47	11
Eighth (10 judges)	50	50	22	11	10
Ninth (17 judges)	47	47	41	29	6
Tenth (28 judges)	40	29	38	8	0
All Districts (215 judges)	50	50	45	23	8

NOTE: The number of respondents varied by case type. Statewide, 204 judges responded to the question for criminal cases (excluding judges who responded "Don't Know"), 167 responded for juvenile cases, 174 for family cases, 191 for civil cases, and 128 for probate cases.

SOURCE: Office of the Legislative Auditor's survey of district court judges, 2000.

Judges' opinions on delay varied by case type and by district.

- **Most attorneys said that delay is not a serious problem in their judicial district.**

As shown in Figure 5.5, the percentage of attorneys indicating that delay is a serious problem ranged from 18 percent for family cases to 3 percent for probate cases. The figure shows that 35 percent of attorneys said that delay is a serious or moderate problem for criminal cases and 39 percent said it was for juvenile cases.

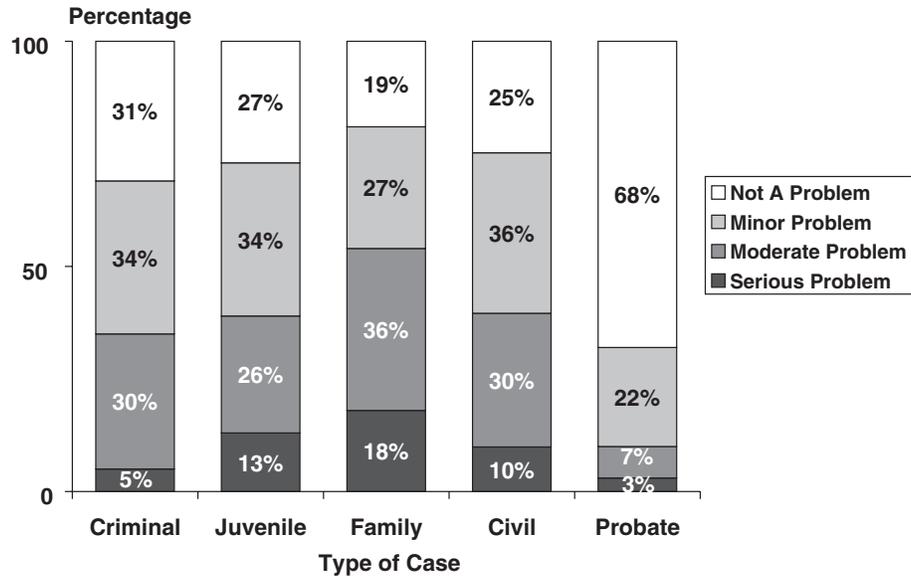
Family cases are the only type of case where a majority of attorneys (54 percent) said that delay is a serious or moderate problem. For civil cases, 40 percent of attorneys said that delay is a serious or moderate problem, and only 10 percent said that delay is a serious or moderate problem for probate cases. Comparing these results with the opinions of judges discussed earlier, we found that attorneys were less likely than judges to see delay as a serious or moderate problem for criminal and juvenile cases, but somewhat more likely than judges to see delay as a problem for family and civil cases.

NEED FOR MORE TIME PER CASE

Although most judges believe that cases are processed efficiently and few believe that delay is a serious problem, we found that:

- **Judges are concerned about the size of their caseloads and their ability to devote adequate time to each case.**

Figure 5.5: Attorney Opinions on the Extent to Which Delay is a Problem in Case Processing, 2000



SOURCE: Office of the Legislative Auditor's survey of attorneys, 2000.

Most judges said quality suffers because there are too many criminal, juvenile, and family cases per judge.

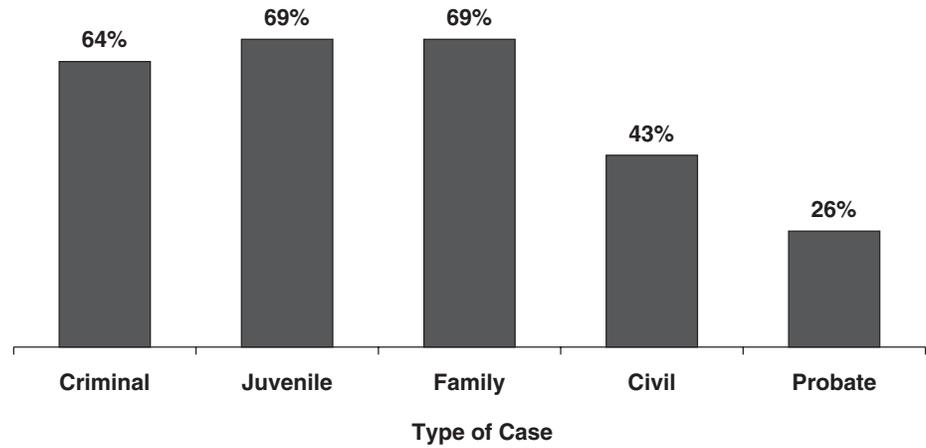
As shown in Figure 5.6, about two-thirds of the judges agreed or strongly agreed that “the quality of judicial decisions suffers because there are too many cases per judge” in criminal, juvenile, and family cases. Fewer judges were concerned about large caseloads affecting the quality of their decisions in civil and probate cases. Similarly, 73 percent of the judges agreed or strongly agreed that “judges generally do not have enough time to spend on criminal cases.” Seventy-seven percent agreed or strongly agreed with that statement with respect to juvenile cases, 75 percent for family cases, 57 percent for civil cases, and 33 percent for probate cases. As shown in Figure 5.7, about four-fifths of the judges agreed or strongly agreed for criminal, juvenile, and family cases that “judges need more time per case if people are to feel their concerns are fully heard.” Nearly three-fifths of the judges said the statement applies to civil cases.

Judges were given the opportunity to make additional comments at the end of the questionnaire, and several of them said that their heavy caseloads made it difficult to give cases the amount of time needed to do an adequate job. The following comments illustrate this concern.

I really think there are too few judges to handle caseloads — particularly increases in [the] past few years in criminal and juvenile [caseloads].... There is amazing pressure to just “get through the calendar”—the quicker, the better, and while we do our best, the quality of decision-making suffers.

Efficiency measures can only go so far. Participants need the time to meet clients, prepare the case, hear the case, and decide the case. We must avoid sacrificing justice to process more cases more quickly.

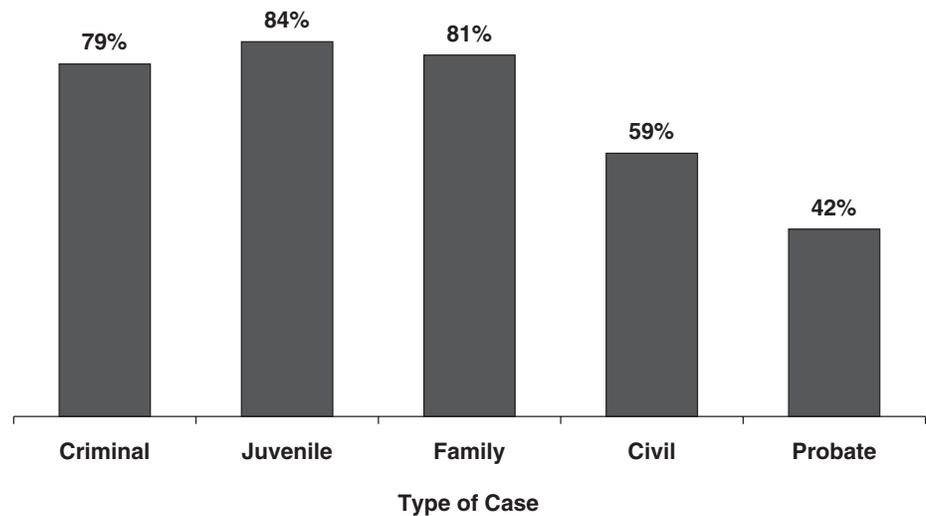
Figure 5.6: Judges Agreeing or Strongly Agreeing that the Quality of Judicial Decisions Suffers Because There are Too Many Cases Per Judge, 2000



SOURCE: Office of the Legislative Auditor's survey of district court judges, 2000.

Figure 5.7: Judges Agreeing or Strongly Agreeing that Judges Need More Time Per Case if People Are to Feel Their Concerns Are Fully Heard, 2000

Most judges said they need more time per case for criminal, juvenile, family, and civil cases.



SOURCE: Office of the Legislative Auditor's survey of district court judges, 2000.

Judges need chamber time to think about tough decisions, especially in family, juvenile, and civil cases.... ideally, one-half day every ten days minimum. This would slow things down, but enhance the quality of decisions. Right now, we are always in court, on an assembly line!

Other comments, such as the following, suggest that heavy caseloads can be very stressful:

I have to say that the sheer number of cases and the resulting stress on the judiciary and the attorneys who appear before us are crushing, to the point where many of the judges in this district have experienced physical problems specifically related to this stress. Among the problems are arraignment calendars that stretch from 9 AM to 2 PM with no break for the judges, attorneys or staff.... Rather than allocate another arraignment session (whether contemporaneous or sequential) and another judge to handle the swollen calendars, we continue to stuff a size 10 foot into a size 6 shoe.

Most of the chief judges we interviewed maintained that their districts were able to process cases in a timely manner. However, they also commented that the number of judges in their district was not adequate to meet the demands of their growing caseloads. As a result, chief judges are concerned that, without an infusion of more judges, the quality of justice will suffer.

Attorneys tended to agree that more court time is needed per case.

Finally, attorneys tended to agree with judges about the need for more court time to process large caseloads. A plurality of attorneys (44 percent) said that judges sometimes need more time per case if people are to feel that their concerns are fully heard. Thirty-two percent said that judges usually or always need more time, and 24 percent said judges seldom or never need more time.

As was the case with judges, attorneys were given the opportunity to make additional comments about case processing at the end of the questionnaire. Several attorneys said that the courts have become too concerned with processing cases quickly, sometimes at the expense of justice. The following comments illustrate this concern:

The courts should be more concerned about justice being served, especially in criminal matters, instead of being concerned about how many cases can we get finished.... Courts should have the attitude that justice is not necessarily efficient.

It is important that the interests of the parties to court proceedings be paramount and not be lost in the goal of moving cases.... In many cases, there is too much pressure to move cases which interferes with the ability of public defenders to advocate for their clients.

Efficiency seems to be the current buzzword in the cottage industry of studying judicial performance. My goal as an attorney is not to see how quickly a case is processed. My goal is to see that a client is treated fairly and that his rights are protected. Often, an "efficient" system conflicts with my job; and the court's goal of "processing" cases overlooks the idea of justice.

CAUSES OF DELAY

Although most judges and attorneys did not think that delay in processing cases is a serious problem for the courts, they were still able to pinpoint several factors that contribute to delay when it occurs. We asked judges and attorneys to rate a variety of factors on the extent to which they contribute to delay.⁵

Table 5.2 lists the factors that, according to at least half of the judges, are most likely to contribute to delay for different types of cases. We found that:

- **Judges most frequently said that delay occurs because there are too few judges, too few public defenders, or attorneys do not have enough time to prepare their cases.**

Table 5.2 indicates that a majority of judges said that “too few judges” greatly or moderately contributes to delay for criminal, juvenile, family, and civil cases. Judges most often rated too few public defenders, not enough time for attorneys to prepare cases, and too few judges as greatly or moderately contributing to delay in criminal and juvenile cases.⁶ Too few judges was the only factor cited by at least

Table 5.2: Judges Reporting Factors That Greatly or Moderately Contribute to Delay, 2000

Reason For Delay	<i>N</i>	Percentage
Criminal Cases		
Attorneys have too little time to prepare	183	70%
Too few public defenders	209	70
Too few judges	205	66
Juvenile Cases		
Too few public defenders	167	70
Attorneys have too little time to prepare	146	70
Too few judges	180	66
Too many minor offenses	160	51
Family Cases		
Too few judges	180	64
Civil Cases		
Too few judges	192	50

At least half of the judges reported that “too few judges” contributes to delay in criminal, juvenile, family, and civil cases.

NOTE: The table includes factors cited by at least 50 percent of the judges as greatly or moderately contributing to delay. Percentages are based on the number of judges who answered each question, excluding those who responded “Don’t Know.” The number of respondents varied depending on the question. No factor was cited as greatly or moderately contributing to delay in probate cases by at least 50 percent of the judges.

SOURCE: Office of the Legislative Auditor’s survey of district court judges, 2000.

⁵ Our surveys of judges and attorneys contained identical lists of factors. For each factor, we asked respondents to indicate whether it “greatly contributes,” “moderately contributes,” “slightly contributes,” or “does not contribute” to delay. We asked for separate responses for criminal, juvenile, family, civil, and probate cases.

⁶ We found similar results when we analyzed only the responses of judges who said that delay is a serious or moderate problem.

half of the judges as greatly or moderately contributing to delay in family and civil cases.⁷

While observing courtrooms, we noted several instances where criminal or juvenile proceedings were delayed or cases were continued because the public defender was representing another client in a different courtroom or another county. We also saw court proceedings delayed because the public defender and prosecutor had not conferred on the case prior to their arrival in the courtroom.⁸ However, in response to a separate question, only about 39 percent of judges agreed or strongly agreed with the statement, “Most judges have to spend too much time waiting rather than hearing cases” in relation to criminal and juvenile cases.

Table 5.3 lists the factors that, according to at least half of the attorneys, are most likely to contribute to delay for different types of cases. We found that:

- **Attorneys said that delay most often occurs because too many minor offenses are brought to court, pretrial diversion is not used enough, or there are too few judges.**

At least half of the attorneys agreed that “too few judges” contributes to delay in criminal, juvenile, family, and civil cases.

Table 5.3: Attorneys Reporting Factors That Greatly or Moderately Contribute to Delay, 2000

<u>Reason For Delay</u>	<u>N</u>	<u>Percentage</u>
Criminal Cases		
Too many minor offenses	425	57%
Too little use of pretrial diversion	391	56
Enhancement of misdemeanor offenses to gross misdemeanors	407	52
Too few judges	436	50
Juvenile Cases		
Too many minor offenses	344	59
Too little use of pretrial diversion	320	52
Too few judges	374	50
Family Cases		
Too few judges	324	57
Backlog of Cases	299	52
Civil Cases		
Too few judges	374	50

NOTE: The table includes factors cited by at least 50 percent of the attorneys as greatly or moderately contributing to delay. Percentages are based on the number of attorneys who answered each question, excluding those who responded “Don’t Know.” The number of respondents varied depending on the question. No factor was cited as greatly or moderately contributing to delay in probate cases by at least 50 percent of the attorneys.

SOURCE: Office of the Legislative Auditor’s survey of attorneys, 2000.

⁷ No factor was described by 50 percent of the judges as greatly or moderately contributing to delay in probate cases. Thirty-five percent of judges cited “too few judges” as greatly or moderately contributing to delay in probate cases.

⁸ When possible, the judge would move on to other cases while the attorneys conferred. Otherwise, judges usually remained in their chambers and worked on other cases while waiting for the attorneys to complete their negotiations.

For criminal and juvenile cases, half or more of the attorneys said that too many minor offenses, too little use of pretrial diversion, or too few judges greatly or moderately contribute to delay. Attorneys also cited enhancement of misdemeanor offenses to gross misdemeanors as a factor in criminal cases.⁹ At least half of the attorneys rated too few judges as a factor that greatly or moderately contributes to delay in family and civil cases.¹⁰

Attorney responses to the questions on the causes of delay indicate that many of them believed that some cases should not be brought to court. Many attorneys said that greater use of pretrial diversion and removing minor offenses from the courtroom could reduce the size of court calendars.

A comparison of Tables 5.2 and 5.3 shows that both judges and attorneys responded that too few judges is an important cause of delay for all types of cases except probate, where delay was not seen as a problem. Judges and attorneys differ somewhat in their perceptions about other factors that cause delay. More judges than attorneys said that too few public defenders and too little time for attorneys to prepare greatly or moderately contributes to delay in criminal and juvenile cases. On the other hand, more attorneys than judges said that too many minor offenses and not enough use of pretrial diversion contributes to delay (perhaps because judges lack knowledge of the extent of its use).

Continuances

Based on our courtroom observations and discussions with judges, we looked at several other factors that could cause delay in processing cases. We found that:

- **Most judges and attorneys did not think that too many continuances are a major cause of delay.**

A continuance is a postponement of a hearing or trial date. Only 37 percent of the judges and 17 percent of the attorneys responded that “too many continuances granted” greatly or moderately contributes to delay in criminal cases. Even fewer responded that continuances were a cause of delay in civil cases. Forty percent of judges strongly agreed or agreed with the statement, “Too many unnecessary continuances occur, often causing delay” for criminal cases. Twenty-one percent of the judges strongly agreed or agreed with the statement in reference to civil cases.

Many districts have taken steps to reduce the number of cases that are continued to later dates.

Sixty-three percent of the judges said they or their district had taken steps to reduce the number of continuances. For criminal cases, this usually involved setting strict schedules at the pretrial conference. The Fourth Judicial District (Hennepin County) requires the presiding criminal judge to sign off on all continuance requests for jury trial dates in criminal cases. For civil cases, most chief judges we interviewed told us that individually assigning cases to judges was

⁹ This is a process where, due to prior offenses, the prosecutor enhances a case originally charged as a misdemeanor to a gross misdemeanor. This increases the number of hearings and procedural requirements and could result in more jury trials.

¹⁰ No factor was described by 50 percent of the attorneys as greatly or moderately contributing to delay in probate cases. Twenty-nine percent of attorneys said too few judges greatly or moderately contributes to delay in probate cases.

an effective way to limit unnecessary continuances because judges do not want large backlogs of pending cases.

Judges also reported that trials were usually held when they were originally scheduled. Two-thirds of the judges surveyed strongly agreed or agreed that most trials are heard when originally scheduled in relation to criminal cases, and 71 percent agreed for juvenile cases. Slightly fewer judges, 55 percent, agreed that family case trials are usually held when originally scheduled and 61 percent agreed for civil cases.

Judge Shopping

In our interviews with chief judges, we heard that motions to remove a judge sometimes are a source of delay. We were told, for example, that attorneys might file a motion to remove a judge whom they feel is more likely to impose a stiff sentence on their client. This practice, sometimes referred to as “judge shopping,” could especially be a problem in single-judge counties because the district has to send in a judge from another county to handle the case, and that could require other scheduling adjustments. Although judge shopping could cause delay in some instances, we found that:

- **Most judges and attorneys did not think that judge shopping is a significant cause of delay.**

Our surveys found that 28 percent of the judges responded that “too many notices to remove a judge” greatly or moderately contributes to delay in criminal cases and 14 percent said it contributes to delay in civil cases. Less than 10 percent of attorneys said that notices to remove a judge contribute to delay. Thirty-nine percent of judges and 10 percent of attorneys responded that “attorneys seek continuances to ‘shop’ for judges” greatly or moderately contributes to delay in criminal cases and lesser percentages responded that way for civil cases.

Interpreters

While observing courtrooms, we encountered several instances where the court had to wait for interpreters and where hearings requiring interpreters took longer than others. Several chief judges and district administrators also indicated to us that they sometimes faced a shortage of interpreters. On the survey, 48 percent of judges and 37 percent of attorneys responded that “too few interpreters” greatly or moderately contributes to delay in criminal cases. Too few interpreters was viewed as less of a problem for other types of cases. For example, 19 percent of judges and 10 percent of attorneys responded that “too few interpreters” greatly or moderately contributes to delay in family cases. We discuss issues about interpreters in greater detail later in this chapter.

The use of interpreters can lengthen the processing of a case.

Transporting Defendants

We observed several instances where court proceedings were held up because the sheriff’s van bringing defendants from the jail to the courtroom had not yet arrived. On our surveys, 46 percent of judges and 36 percent of attorneys

responded that “waiting for in-custody defendants to be transported” greatly or moderately contributes to delay in criminal cases. Thirty-nine percent of judges and 34 percent of attorneys said it greatly or moderately contributes to delay in juvenile cases.

Pro Se Litigants

Several judges and attorneys commented that *pro se* litigants (defendants or plaintiffs who represent themselves without an attorney) can often cause delay.¹¹ We also observed this when we visited courts. Because *pro se* litigants are usually unfamiliar with laws and courtroom procedures, judges sometimes have to take extra time to explain things to them and make sure they understand the consequences of actions they take, such as pleading guilty to an offense. In response to open-ended questions on how the courts could improve services, several judges and attorneys mentioned improving legal aid and other services for *pro se* litigants.

Litigants who represent themselves can cause delay.

ISSUES THAT NEGATIVELY AFFECT CASE PROCESSING TODAY

In our visits to courthouses and discussions with judges, we became aware of several issues that confront the courts today but that were minor or nonexistent five or ten years ago. In our surveys, we also asked judges and attorneys to rate the extent to which various issues negatively affected the court’s ability to process cases. We found that:

- **A majority of judges said that new types of cases, like harassment, had a substantial effect on the court’s ability to process cases today compared with five or more years ago.**

There was less agreement among judges about other issues that have had a moderate or substantial effect. No issue was cited by a majority of attorneys as negatively affecting case processing, although smaller shares of attorneys reported that certain issues had a substantial effect. These issues are discussed below. Tables 5.4 and 5.5 present the responses of judges and attorneys, respectively.

New Types of Cases

Tables 5.4 and 5.5 show that 88 percent of judges and 71 percent of attorneys see new types of cases, like harassment, as having a moderately or substantially greater impact on case processing today than five or more years ago. The harassment statute, originally enacted in 1990, essentially allows individuals to petition the court to issue a restraining order against persons who are stalking or otherwise harassing them.¹² Judges we talked with commented that, although the law was originally intended as a method to protect potential victims of stalking, its

¹¹ The questionnaire did not include an item about *pro se* litigants.

¹² *Minn. Stat.* (2000) §609.748.

Table 5.4: Judge Opinions on Factors Negatively Affecting Courts' Ability to Process Cases Today Compared with Five or More Years Ago, 2000

Issue	N	Percentage Responding:			
		Substantial Effect	Moderate Effect	Slight Effect	No Effect
New types of cases like harassment	205	62%	26%	10%	2%
Legislation or rule changes leading to new procedural or hearing requirements	209	46	39	13	2
Changing expectations of court to be a provider of services as well as a trier of facts	201	44	40	13	3
Changes in enforcement and prosecution of DWI laws	206	31	44	18	7
Cultural and language differences presented by immigrants unfamiliar with the courts	209	23	33	30	13
Changes in enforcement and prosecution of controlled substance offenses	202	19	43	22	16
Changes in enforcement and prosecution of juvenile status offenses	168	16	37	33	14
Changing expectations for judges' community involvement	199	9	23	36	32
Insufficient courthouse security	200	9	21	33	38
Increased need for mental health assessments	198	8	28	43	21

SOURCE: Office of the Legislative Auditor's survey of district court judges, 2000.

A variety of factors affects courts' ability to process cases.

use has expanded considerably. For example, individuals have filed harassment lawsuits against neighbors or relatives with whom they do not get along. Harassment filings grew from 4,824 in 1992 when the courts first began counting harassment filings to 8,630 in 1998, a 79 percent increase.

Implied consent cases have also become more numerous over the last decade. These are proceedings to revoke a person's driver's license for failure to submit to a sobriety test when stopped for driving while impaired.¹³ Implied consent filings increased from 2,174 in 1992 to 3,676 in 1998, a 69 percent increase. Several of the chief judges we interviewed said domestic violence cases and requests for orders for protection have also increased. They commented that victim-support organizations and increased publicity about domestic violence laws have resulted in greater willingness of victims to come forward.

¹³ *Minn. Stat.* (2000) §169A.50-169A.53.

Table 5.5: Attorney Opinions on Factors Negatively Affecting Courts' Ability to Process Cases Today Compared with Five or More Years Ago, 2000

Issue	N	Percentage Responding:			
		Substantial Effect	Moderate Effect	Slight Effect	No Effect
Changes in enforcement and prosecution of DWI laws	421	37%	36%	19%	9%
New types of cases like harassment	482	35	36	23	6
Changes in enforcement and prosecution of controlled substance offenses	395	32	34	24	10
Legislation or rule changes leading to new procedural or hearing requirements	501	22	34	33	11
Changing expectations of court to be a provider of services as well as a trier of facts	446	21	40	26	13
Changes in enforcement and prosecution of juvenile status offenses	351	21	36	30	14
Cultural and language differences presented by immigrants unfamiliar with the courts	460	14	31	34	20
Increased need for mental health assessments	400	6	25	48	22
Changing expectations for judges' community involvement	373	5	11	28	56
Insufficient courthouse security	456	2	7	23	68

SOURCE: Office of the Legislative Auditor's survey of attorneys, 2000.

Judges and attorneys believe that frequent changes to laws and procedures can negatively affect case processing.

Changes in Procedural Requirements

Another factor that judges and attorneys think negatively affects case processing is that the Legislature and Supreme Court frequently change procedural or hearing requirements. As shown in Tables 5.4 and 5.5, 85 percent of judges and 56 percent of attorneys said that "legislation or rule changes leading to new procedural or hearing requirements" substantially or moderately affected the court's ability to process cases today compared with five or more years ago. When asked on the survey what the Legislature could do to improve case processing, 27 judges (14 percent of the judges responding to the open-ended question) said the Legislature should stop changing laws or procedural requirements every year. Many of these comments were specifically directed at DWI laws. Several chief judges we interviewed said that the tightening of the timeframe for child protection cases has forced their district to shift resources to those cases, causing the courts to fall behind in other areas.

Changing Expectations of the Courts

Eighty-four percent of judges and 61 percent of attorneys said “changing expectations of the court to be a provider of services as well as a trier of facts” has had a substantial or moderate negative effect on the ability of courts to process cases. For example, some courts are actively involved with the assessment and treatment of defendants with chemical dependency and mental health problems. In addition, some judges we talked with said the courts have become increasingly involved with resolving personal disputes, such as harassment cases, child custody disputes, and conciliation court cases.

Changes in Enforcement

Judges and attorneys also said that changes in enforcement practices have affected the courts. For example, 75 percent of the judges and 72 percent of the attorneys we surveyed said that “changes in the enforcement and prosecution of DWI laws” substantially or moderately negatively affected the court’s ability to process cases.¹⁴ Sixty-two percent of judges and 66 percent of attorneys responded the same way about controlled substance abuse. Fifty-three percent of judges and 56 percent of attorneys said that “changes in the enforcement and prosecution of juvenile status offenses” substantially or moderately affected the court’s ability to process cases.¹⁵

Growth in the Need for Interpreters

In some districts, the need for interpreters in the courts has grown considerably.

Tables 5.4 and 5.5 show that 56 percent of judges and 45 percent of attorneys said that “cultural and language differences presented by immigrants unfamiliar with the courts” substantially or moderately affected the court’s ability to process cases today compared with five or more years ago. Several chief judges and district administrators whom we interviewed said that growth in their district’s immigrant population has resulted in an increased need for interpreters. In addition to language differences, many recent immigrants do not understand courtroom procedures or the legal system in general. Using interpreters can lengthen case processing; we observed that court hearings with interpreters tended to take longer than others where interpreters were not involved.

We also asked court administrators about changes in the need for interpreters over the last five years. Thirty of the 82 court administrators who responded to this survey question (37 percent) reported an increase of 50 percent or more in the need for interpreters, and 19 court administrators (23 percent) said that the need for interpreters has increased between 25 and 49 percent. In addition, 13 percent of court administrators said that having no interpreters available in certain languages in their county is a serious problem and 45 percent said it is a moderately serious problem.

¹⁴ Between 1992 and 1998, the number of misdemeanor DWI filings declined by 2 percent, but the number of gross misdemeanor DWI filings increased 48 percent.

¹⁵ Juvenile status offenses are offenses, such as underage drinking, that would not be crimes if committed by an adult. Between 1992 and 1998, juvenile runaway filings increased by 42 percent, truancy filings increased by 71 percent, and other status offenses increased by 360 percent.

While we were unable to obtain reliable information on the percentage of non-English speaking residents in Minnesota, the U.S. Census provides an estimate of the number of immigrants by county.¹⁶ According to the census, Minnesota has received a net migration of about 55,173 people from foreign countries between 1990 and 1999, about 1.2 percent of the state's 1999 population. Immigration has been greatest into the Second and Fourth Judicial Districts (Ramsey and Hennepin counties). In both of those districts, 2.4 percent of the 1999 population are immigrants who arrived since 1990. While immigrants make up less than 1 percent of the populations in the other judicial districts, several individual counties have immigrant populations above 1 percent. For example, Nobles County's immigrant population is 2.5 percent and Olmsted County's is 2.0 percent.

A committee of the Conference of Chief Judges recently issued a report on the need for court interpreters.¹⁷ The study reported that the number of requests for interpreter services in Hennepin County grew 97 percent from 1996 to 1999. In Ramsey County, interpreter requests increased 61 percent. Statewide, judicial district expenditures on interpreter services (excluding the Eighth Judicial District in west central Minnesota) increased by 122 percent, from \$674,052 to \$1,499,031, between 1996 and 1999. The study projected that interpreter costs will increase by 20 percent per year in the future. The study estimated that Hennepin and Ramsey counties spent about \$59 per interpreter request in 1999, excluding court staff time arranging for interpreters. Elsewhere in the state, it costs almost \$75 per interpreter request.

The study recommends that the Legislature increase funding and staffing to the State Court Administrator's Office to develop and implement consistent statewide practices and policies, provide assistance to court administrators in obtaining appropriate and timely interpreter services, and increase the number of qualified interpreters available (including money for training).¹⁸ The study makes numerous other recommendations, mostly directed at standardizing the recruitment, use, and compensation for interpreters.¹⁹

Guardians *Ad Litem*

Guardians *ad litem* are not always available when needed to represent children in court.

Finally, some chief judges and district administrators we interviewed expressed concerns about the increasing number of cases involving guardians *ad litem*.²⁰ Some said that while the Legislature has provided some funding for guardians, the amount has not been adequate.²¹ Although federal and state statutes require the appointment of guardians for cases involving allegations of child abuse and

¹⁶ U. S. Census Bureau, *County Population Estimates for July 1, 1999*, http://www.census.gov/population/estimates/county/co-99-4/99C4_27.txt; accessed November 10, 2000. Not all immigrants are non-English speaking.

¹⁷ Conference of Chief Judges State Funding Committee, *Court Interpreter Subcommittee Report*, (St. Paul, 2000).

¹⁸ *Ibid.*, 21.

¹⁹ *Ibid.*, 4-6.

²⁰ A guardian *ad litem* is a person appointed by a court to represent the best interests of a child in court proceedings where a child's interests might be at risk, such as cases involving marriage dissolution, child abuse or neglect, domestic abuse, child custody, or child support.

²¹ As reported in Chapter 2, the state will begin paying all guardian *ad litem* expenses in July 2001.

neglect, we learned that guardians have not always been available when needed. While counties have often relied on volunteers, some district administrators said it has become difficult to find sufficient numbers of volunteers. We did not ask specific questions about guardians *ad litem* on our judge survey, but seven judges commented that the Legislature should increase funding for guardians. Most court administrators (62 percent) reported that the demand for guardians in their counties had increased over the last five years by 50 percent or more.

JUDICIAL DISTRICT OPERATIONS AND CASE MANAGEMENT

While all cases originate at the district court level, and all district courts around the state have similar responsibilities, some practices vary from district to district and others vary among counties within a single district. Courts at the county level largely control case-management practices; district participation is limited, although this varies around the state.

Assigning Judges

From speaking with chief judges we learned that:

- **The way judges are assigned to cases varies by judicial district.**

By law, chief judges have general administrative authority over courts in their district.²² This authority includes making assignments of judges to hear cases arising within the district. Approaches to assigning judges differ based on chief judges' management styles as well as historical precedent in the district. In discussing judge assignment authority, many chief judges described the need to be collaborative and consider views of the judges in their district. At least one district has a committee of judges that sets the general direction for assignments, and others have districtwide policies governing assignments. One chief judge said he becomes involved in judge assignments only when recusals or motions to remove a judge require intervention.

The assignment of judges is done in a centralized way in some districts but not in others.

At the same time, chief judges spoke of the need to balance the workload across the district. Accommodating individual judge preferences is secondary to ensuring that cases are heard and judges' workloads are relatively even. Many chief judges indicated that their judges must be generalists; for the most part, judges do not have the opportunity to specialize in only certain case types.

The Fifth and First Districts exemplify the variation between decentralized and centralized judge assignments. In the Fifth District (southwestern Minnesota), 16 judges are organized into 5 assignment areas, as depicted in Table 5.6. Each of the assignment areas follows its own case assignment and scheduling plans. With the exception of the chief judge, judges in the Fifth District rarely travel to counties outside their assignment areas. When a motion to remove a judge is filed or a judge recuses himself from a case, judges from within the assignment area

²² *Minn. Stat.* (2000) §484.69, subd. 3.

Table 5.6: Assignment Areas in the Fifth Judicial District, 2000

Assignment Area	Number of Counties	Number of Judges
Eastern District	One: Blue Earth	Four
Southern District	Four: Cottonwood, Faribault, Jackson, Martin	Four
Southwestern District	Four: Murray, Nobles, Pipestone, Rock	Three
Northwestern District	Three: Lincoln, Lyon, Redwood	Three
Northern District	Three: Brown, Nicollet, Watonwan	Four

SOURCE: State of Minnesota Fifth Judicial District, *Amended Administrative Order #2, Fifth District Caseflow Management Order*, (Mankato), 1996.

will shift to accommodate the need. The district office steps in to locate a judge outside an assignment area when none of the judges within an assignment area can accept a reassigned case.

In contrast, assignment of judges throughout much of the First Judicial District (south metropolitan Minnesota) is more centrally controlled. Although judges typically work out of the courthouse in their county of residence, the First District's central assignment office moves judges to nearby counties as needed. The central assignment office works with court administrators in the counties to monitor cases. When contested cases are ready for hearings, the office assigns judges to them.²³ A judge who is scheduled for trials in Scott County, for example, could be moved on a day's notice to hear trials in Dakota County, if trials on the Scott County calendar settle.

Assigning Cases to Individual Judges

Beyond assignment of judges, we found that:

- **The time at which specific cases are assigned to individual judges varies by case type and geography. According to court management experts, however, the method of assigning judges matters less to effective case management than other factors such as judge leadership.**

Case assignment systems range from "individual" calendars, where one judge hears all case events from filing to disposition, to "master" calendars where different judges preside over various court events linked to a case. Court management experts tend to agree that all types of case assignment systems have value. Each approach carries advantages and disadvantages. What is more important, according to studies on caseflow management, are factors such as judge leadership and commitment to control caseflow, published goals of the case

²³ The central assignment office assigns contested matters for all but two counties in the First District; Sibley and McLeod counties, on the western edge of the district, assign their own cases.

assignment system and means to attain the goals, and adequate communications among judges and other court participants.²⁴

Court administrators in some Minnesota counties never assign cases to an individual judge. Multiple judges may hear different events for the same case, such as an arraignment, omnibus hearing, or trial. In effect, the case stays with a particular judge only for trial and sentencing. Counties with only a single judge may or may not officially assign cases to that judge, but practically speaking, that judge oversees all cases through to disposition, barring a recusal or notice to remove.

According to our survey of court administrators:

- **Most counties assign family and civil cases to judges when cases are filed; far fewer do so for criminal and juvenile cases.**

Around Minnesota, courts assign different case types to individual judges at different case events. A majority of counties (79 percent) assign civil and family cases to individual judges when the first court document is filed. Table 5.7 describes the case events at which these cases are often assigned.

Civil and family cases are likely to be assigned to an individual judge when filed.

Table 5.7: Assigning Civil, Family, and Probate Cases to Individual Judges by County, 2000

Point When Assigned to Individual Judge	Percentage of Counties		
	Civil	Family	Probate
When filing first court document	79%	79%	40%
Up to or near pretrial conference or trial management conference	8	10	10
When setting trial date	1	1	13
At time of trial	10	10	19
Other	2	1	18

NOTE: Counties that do not assign cases to individual judges are included with those that assign at the time of trial. In some counties, cases are assigned when contested or if an objection is filed.

SOURCE: Office of the Legislative Auditor's survey of court administrators, 2000.

In contrast to civil cases, only 29 percent of counties (a plurality) assign adult felonies to individual judges at the point the case is first filed; 27 percent (again, a plurality) assign gross misdemeanors at this point. Other counties assign adult felonies and gross misdemeanors at various later points, such as at the arraignment or the omnibus hearing, as shown in Table 5.8. Misdemeanor cases, petty misdemeanors, and traffic violations are less likely to be assigned to an individual judge prior to trial.

Courts frequently treat juvenile cases differently from other criminal cases. Higher percentages of counties assign juvenile felonies and juvenile gross

²⁴ Maureen Solomon and Douglas K. Somerlot, *Caseflow Management in the Trial Court: Now and for the Future* (Chicago: American Bar Association, 1987), 43-44; and David Steelman, *Caseflow Management: The Heart of Court Management in the New Millennium* (National Center for State Courts, 2000), 88-100.

Table 5.8: Assigning Adult Criminal Cases to Individual Judges by County, 2000

Point When Assigned to Individual Judge	Percentage of Counties			
	Felony	Gross Misdemeanor	Misdemeanor	Petty Misdemeanor/Traffic
When case is filed	29%	27%	23%	23%
First appearance or arraignment	18	19	17	12
Omnibus hearing	20	20	8	2
Pretrial conference	7	6	10	2
When setting trial date	0	0	10	15
At time of trial	17	18	25	39
Other	10	10	8	6

NOTE: Shaded numbers indicate a plurality of counties. Counties that do not assign cases to individual judges are included with those that assign at the time of trial. In some counties, only certain types of criminal cases, such as serious felonies, are assigned. In others, criminal cases are assigned when a not guilty plea is entered.

SOURCE: Office of the Legislative Auditor's survey of court administrators, 2000.

misdemeanors to individual judges when the case is first filed (37 and 35 percent, respectively). Several judges told us that they think continuity is especially important in juvenile cases.

From county to county, the assignment of juvenile protection cases (child abuse and neglect) is spread out across several different case events, as shown in Table 5.9. A plurality of counties (35 percent) assigns juvenile protection cases to individual judges at the admit-or-deny hearing.

We also found that:

- **Within a single judicial district, procedures for assigning cases differ among counties.**

Table 5.9: Assigning Juvenile Protection Matters to Individual Judges by County, 2000

Point When Assigned to Individual Judge	Percentage of Counties
Emergency protective hearing	20%
Filing of petition for Child in Need of Protection	22
Admit or deny hearing	35
Pretrial conference or when setting trial date	5
At time of trial	14
Other	4

NOTE: Shaded number indicates a plurality of counties. Counties that do not assign cases to individual judges are included with those that assign at the time of trial.

SOURCE: Office of the Legislative Auditor's survey of court administrators, 2000.

Within all eight of the judicial districts containing multiple counties, the assignment of criminal cases varies by county. For instance, of the 17 counties in the Ninth District (northwestern Minnesota), 35 percent assign adult felony cases to judges when the cases are filed. Another 29 percent assign them at the time of trial, 18 percent at the omnibus hearing, and 12 percent at the pretrial conference. In the remaining county, criminal cases are assigned at the time a not guilty plea is entered. Similar variation is evident in the other districts.

Even though most counties assign civil cases at the time the first document is filed, there is some variation among counties within a given district. In five of the eight judicial districts comprising multiple counties, the assignment of civil cases varies by county. For example, of the six counties reporting from the Tenth District (north metropolitan and east central Minnesota), one assigns civil cases when the first court document is filed and another at the time of trial. Two counties may assign civil cases at pretrial conferences, but for one of these counties, whether civil cases are individually assigned depends on each judge's preferences. In one county, a civil case is assigned to an individual judge not at specific case events but only after the court reviews it to determine whether individual assignment is appropriate for that case. The remaining county rarely assigns civil cases and does so only if a judge deems a case to be "extraordinary."

Case Management

Many techniques are available to manage cases and court administrators in most counties are actively involved in improving case management. We found that:

- **Court management experts commonly recommend some case-management activities, but we believe that other activities require evaluation before more widespread use in Minnesota.**

Reports published by the National Center for State Courts generally agree that practices and policies to ensure a firm trial date are important to a well-managed court.²⁵ Data are not available on the extent to which trials in Minnesota begin on the first scheduled trial date.²⁶ But 81 percent of Minnesota's court administrators reported that they follow specific practices to make sure trials occur as originally scheduled (unless cases settle prior to trial).

Ensuring a firm trial date is important to effective case management.

Practices for keeping firm trial dates varied among counties, but court administrators mentioned four most frequently. These are:

1. Judges oversee and approve requests for continuing a trial date. In some counties, judges approve all such requests; elsewhere, judge approval is needed under certain conditions, such as for requests within 24 hours of the trial.

²⁵ Steelman, *Caseflow Management*, 9-10; and John Goerd, *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts, 1987* (National Center for State Courts, 1989), 81.

²⁶ The data systems used by the State Court Administrator's Office do not provide the data needed to analyze continuance rates. But in response to a question on our survey, two thirds of the judges who responded agreed or strongly agreed with the statement, "Most trials are heard when originally scheduled (if not settled first)."

2. Court clerks contact attorneys a day or a week in advance of the trial to determine the status of the case and assess the likelihood of settlement or trial.
3. The court holds pretrial conferences or settlement conferences shortly before the trial. Pretrial conferences are formal proceedings held to determine motions, discuss pleas, and consider matters to promote a fair and expeditious trial. They are not mandatory but often promote settlement of cases and avoid the time and expense of trials.
4. Clerks schedule multiple back-up trials on trial day, knowing that some, if not all, will settle. This has to be done carefully to avoid heavy overscheduling that leads to case continuances.

Another practice cited by court management experts as important to effective caseflow management is active supervision of cases from filing to disposition.²⁷ One component of this is monitoring the progress of individual cases. Court administrators in nearly all Minnesota counties said someone monitors the age of cases to identify “old” cases, according to our survey. The responsibility for doing so varies. Although 56 percent of respondents said court administration is primarily responsible for identifying old cases, district administrators and sometimes judges share this responsibility in other counties. Table 5.10 shows activities commonly used to manage case flows and who is primarily responsible for them.

Other case management activities are not as widespread. For instance, less than half of court administrators said someone has responsibility for identifying complex cases and assigning them to separate management tracks even though case management experts suggest this assists case processing.²⁸

We found that:

- **Most court administrators have taken steps in the past five years to improve case processing. The specific steps have varied among counties, and what works well in one county may not work well elsewhere.**

When asked about steps taken in the past five years to improve case processing, 80 percent of the court administrators described actions they have undertaken. The actual actions varied widely. Of the 65 court administrators responding, the largest group (25 percent) said they improved case calendaring. This included actions such as requiring all criminal pretrial hearings to occur two weeks prior to trial or instituting a “one-family/one-judge” approach when multiple cases involve a single family. Smaller groups of court administrators described a wide variety of case processing techniques, from involving attorneys in discussions over case processing to beginning a pilot project for assisting *pro se* litigants. Table 5.11 illustrates some of this variation.

²⁷ Steelman, *Caseflow Management*, 107-108; and Solomon and Somerlot, *Caseflow Management in the Trial Court*, 11-15, 23.

²⁸ Steelman, *Caseflow Management*, 49.

Most court administrators help monitor the progress of cases.

Table 5.10: Responsibility for Common Case-Management Activities, 2000

Activity	Responsibility Lies Primarily With:					
	Court Administration	District Administration	Court and District Administration	Judge	Court Administration and Judge	Court and District Administration and Judge
Consider availability of attorneys when setting criminal calendars (N = 84)	86%	-	1%	6%	5%	-%
Regularly discuss calendar issues with attorneys, law enforcement, and probation (N = 84)	65	-	5	2	15	1
Screen "old" cases to determine reasons for delay (N = 84)	64	-	17	1	7	7
Monitor case age to identify old cases (N = 84)	56	1	26	1	6	8
Maintain accurate and reliable inventory of cases awaiting court action (N = 83)	61	4	20	1	2	4
Determine cause of trial date continuances (N = 82)	49	2	10	16	5	-
Notify attorneys when cases exceed timing guidelines (N = 83)	45	-	-	10	1	-
Implement backlog reduction strategies (when needed) (N = 82)	43	-	16	9	11	1
Measure backlog of cases (N = 80)	43	13	24	-	4	1
Identify criminal cases likely to be resolved before a trial date (N = 84)	40	-	1	12	14	-
Build into calendars a "back-up" block of judge time or another way to cover judge absences (N = 83)	35	19	11	4	2	1
Report on percentage of cases that meet timing guidelines (N = 80)	30	34	20	1	1	8

NOTE: For certain activities, such as reporting on cases that meet timing guidelines, some court administrators said the state, not the local courts, had primary responsibility.

SOURCE: Office of the Legislative Auditor's survey of court administrators, 2000.

Table 5.11: Steps Taken by Court Administrators to Improve Case Processing, 2000

- Improve calendaring of cases
- Involve attorneys, law enforcement, or probation services in policy discussions
- Provide ongoing review of case-processing procedures
- Add block scheduling for certain case types
- Work with judges to identify pending cases that require action for timely dispositions
- Change administrative processes, such as assigning each case to a caseload manager
- Adopt procedures to limit continuance requests and ensure timely trials
- Require prosecutors and public defenders to attend arraignments
- Schedule certain public defenders or prosecutors on particular days to assure their attendance
- Meet regularly with judges to discuss case assignments and processing
- Combine hearings, such as the omnibus hearing and settlement conference
- Schedule back-up trials for trial calendars, knowing that most will settle in advance
- Follow a case management plan
- Set the scheduling conference as civil cases are filed
- Give parties the appropriate forms with court dates before they leave courthouse
- Adopt fast-track procedures for certain cases
- Use computers to generate forms that are frequently used
- Change jury procedures to minimize disruptions to jurors' lives
- Begin pilot projects to assist *pro se* litigants

SOURCE: Office of the Legislative Auditor's survey of court administrators, 2000.

Court administrators have taken various steps to improve case processing.

Actions taken by some counties to improve case processing have been abandoned by others. For example, several court administrators said they improved case processing by setting a scheduling conference for civil cases as soon as the cases are filed. We learned that other counties no longer hold scheduling conferences because judges found that scheduling was better done outside the courtroom. Instead, court administrators in these counties typically mail informational statements to the parties.²⁹

We learned about several local initiatives to improve aspects of case processing. In most cases, the projects were either spearheaded by judges or enjoyed strong judge support. They often combined case processing improvements with other objectives, such as treating offenders for alcohol or drug abuse. Although we have not evaluated the costs and benefits of the specific projects, the people involved believe the efforts have proven beneficial. Many such projects were

²⁹ Minnesota's general rules of practice for civil cases require parties to submit information needed by the court to manage the case, such as a case description, whether a jury trial is requested, and estimated completion date for discovery. (*General Rules of Practice*, 111.02.) These "informational statements" allow the court to set a scheduling order that details deadlines for case events, including a trial date.

**Better
management of
court calendars
helps make more
efficient use of
judge time.**

called to our attention, but we briefly mention only four here as examples of initiatives underway.

One example from the Eighth District (west central Minnesota) is an analysis conducted of best practices in calendaring. As part of a total quality management initiative in 1994, a team of employees identified scheduling practices to improve case management and make more efficient use of judicial time. Team members based their recommendations in part on surveys and interviews of judges, court staff, and attorneys. Their work resulted in 27 short-term recommendations, as well as a set of topics for studying longer-term issues.

The short-term recommendations now serve as a basis for scheduling and monitoring cases around the district. The recommendations included: requiring continuance requests to be in writing when they are for cases assigned to individual judges; setting pretrial conferences prior to all trial dates and requiring parties to attend; making procedures and forms uniform across all counties in the district; attaching to the front of the file the dates by which court timing objectives would have to be met; and meeting regularly with local attorneys to resolve case management issues.

A second example of a local initiative to improve case processing is the Mower County Driver's License Return Program. The program has operated for about three years, targeting first-time offenders arrested for driving after license revocation, cancellation, or suspension. Ordinarily, many of these drivers would have had their licenses suspended due to their inability to pay fines for other petty misdemeanors. They still had to drive to get to their jobs, but doing so with their license suspended often resulted in additional arrests. License reinstatement proved time consuming and difficult.

To break the cyclic arrests, Mower County began the Driver's License Return Program with the cooperation of the courts, prosecutors, public defenders, and correctional services. The program combined a stay of adjudication from the courts with active supervision from probation services and help in regaining driving privileges. To date, none of the participants who have successfully completed the program has been rearrested for another driver license offense in the county, although some have failed to complete the program. The program has contributed to fewer misdemeanor arraignments for driving after license suspension or revocation and concomitantly freed up jail space that repeat offenders previously occupied.

A third example is "Teen Court" in Blue Earth County. Since mid-1997, Teen Court has operated as an alternative to District Court for second- and third-time juvenile petty offenders. Juveniles who participate have already admitted to the offense; a jury of teenagers trained for their role query the offender about the offense. Jury members determine what sentence to impose. Sentences have ranged from fines and restitution to writing essays on health risks associated with smoking or underage drinking.

Participants who successfully complete their sentences have the charges dismissed. The program has reduced the number of cases in juvenile court by about 100 per year. Most of the participants complete their sentences and do not reoffend, although program coordinators say the relatively small number of cases

Drug Court participants submit to frequent, random drug tests.

makes it difficult to legitimately test Teen Court's impact on recidivism in the county. Other counties have adopted similar Teen or Peer Courts.

A fourth example is the Drug Court in the Fourth District (Hennepin County). Establishing the Drug Court changed the way Hennepin County managed drug-related cases. By providing a more immediate response and requiring treatment for those charged with drug crimes, Drug Court is intended to improve defendants' behavior and reduce crime over the long term. At defendants' first appearance in Drug Court, which occurs the day after being booked on their charges, they are assessed to determine the need for chemical dependency treatment. Drug Court participants are required to submit to frequent, random drug testing and frequent judicial reviews of their cases. Drug Court also uses sanctions, such as the threat of jail for breaking program rules and reducing a fine in return for clean urinalyses, as incentives to stay off drugs.



A judge reviews a case with a defendant in Hennepin County's Drug Court.

In processing cases through Drug Court, the Fourth District reports that it has significantly reduced the case processing time and the number of appearances per case.³⁰ The success of Drug Court depends on working collaborations with county probation services and police officers who visit defendants' homes to ensure compliance with court conditions.

Technological Initiatives

In addition to the previously mentioned case-management practices, we found that:

³⁰ Hennepin County District Court Research Department, *Hennepin County Drug Court Second Year Activity Report* (Minneapolis, 1999), ii.

- **Court administrators believe their increasing reliance on technological initiatives has improved case processing, but more work remains to be done.**

The Minnesota Judiciary's strategic plan recognizes the need for an expanded and innovative use of technology in the courts.³¹ This encompasses everything from having personal computers in courtrooms, to using interactive video for hearings, to having a statewide database on cases, criminal histories, and warrants.

Local Technological Initiatives

We found that:

- **Forty-three percent of court administrators reported undertaking technological initiatives in the past five years that they believe assist case processing.**

Computer upgrades, networking computers, and installing computers in the courtrooms were among the initiatives most frequently mentioned as improvements in the last five years. Terminals in the courtroom make data immediately accessible to judges and courtroom personnel. Clerks can complete case processing and data entry while in the courtroom; they can produce forms and notices to hand to defendants before they leave the courthouse. In one county, court administration installed a computer terminal in the office that linked with community corrections data to help staff track offenders and fine or restitution payments.

Another common technological improvement according to court administrators is the use of on-line calendars. These calendars provide automated, real-time schedules of current cases and provide easy access to calendars for all judges and clerks. About 18 percent of the court administrators, however, reported having little or no automation in setting calendars. Court administrators also mentioned the use of electronic mail and interactive television as initiatives that have improved case processing.

Some technologies are relatively new and are available in only a small number of counties. Evaluations of these technologies could reveal whether more widespread use is cost-effective. One example is an automated ticket-writer program that allows law enforcement and courts to share data electronically, negating the need to reenter computerized data. Another is document-imaging systems that allow access to case information from multiple locations and reduce the need to store paper documents.

Interactive Television

Of special note is court use of interactive television (ITV), where courts are able to hold hearings from remote locations. This can be especially useful in judicial districts spread out over large areas, as is the case in all districts except the Second (Ramsey County) and Fourth (Hennepin County). For example, travelling to a

Computer terminals in courtrooms make data accessible to judges and court staff.

³¹ Minnesota Conference of Chief Judges, *Minnesota Courts Strategic Plan for the Year 2005* (St. Paul, 1996), 34-35.



Interactive television allows litigants in one county to interact with a judge located elsewhere.

Regional Treatment Center to hold a mental health hearing consumes great amounts of time and is costly. Courts have used ITV to hold hearings using judges from other counties when there are judge absences, when a judge is removed from a case, or in counties without a chambered judge.

In 1999, Minnesota's Supreme Court approved the use of interactive television for use in civil cases following a pilot project conducted in the Ninth Judicial District (northwestern Minnesota).³² An evaluation of the Ninth District's use of ITV reported that users are generally satisfied and the system more than pays for itself by avoiding travel expenses and saving time.³³ The Ninth District developed protocols for ITV use that are recommended for other districts' use. In addition, the Supreme Court approved statewide use of ITV on a limited basis in criminal cases as long as the district follows agreed-upon protocols and agrees to participate in an evaluation of ITV.

In its strategic plan, the judiciary endorses the use of ITV. It recommends "using whenever possible, tele/videopresence to facilitate access and reduce the need for travel."³⁴

We observed that:

- **Although courts' use of ITV has proven effective and is growing, the potential for ITV is even greater.**

³² Sue K. Dosal, State Court Administrator, to Judicial District Administrators, *ITV Protocols*, October 25, 1999, memorandum.

³³ Willet R. Willis, *Assessment of the Interactive Television Program in the Ninth Judicial District of Minnesota* (Denver: National Center for State Courts, Court Services Division, 1999), 32, 35.

³⁴ Minnesota Conference of Chief Judges, *Minnesota Courts Strategic Plan*, 35.

The Conference of Chief Judges has endorsed the use of interactive television for civil cases and certain events in criminal cases.

Chief judges who have used ITV find it beneficial. They believe that ITV improves access to justice for citizens in geographically large districts and improves efficiency by saving travel time. Seven of the 10 judicial districts currently have access to ITV, although the scope of its use varies. Some judges have used ITV systems set up by other units of government, such as a sheriff department or high school. All chief judges who said their districts actively use ITV are seeking to expand its use. Many sought funding in their budget requests to the State Court Administrator's Office to install additional ITV sites around their districts, but because of limited appropriations and other budget items receiving higher priority, not all requests were granted. Besides using ITV for hearings, some districts use it for training and administrative meetings.

Statewide Integrated Information System

The judiciary's strategic plan calls for the technology necessary to support timely and comprehensive sharing of information across county lines and across agencies.³⁵ During our study, we heard many judges and court staff express concern about the inadequacies of the information systems now in place. Problems include the inability to share data with courts in other parts of the state or with other agencies, such as law enforcement; the lack of criminal history information on defendants; antiquated and inflexible case-information systems; inadequate case-management features; and redundant data entry.

The judiciary's Technology Planning Committee is overseeing a multi-year effort to design new information technology, known as the Minnesota Court Information System or MNCIS. The State Court Administrator's Office anticipates that MNCIS will be an integrated system allowing access by relevant users from all levels of government involved with criminal justice.

While an evaluation of MNCIS is beyond the scope of this study, throughout our work we heard numerous high expectations expressed for the project. Judges and court staff are looking to MNCIS for everything from instantaneous criminal history data, to automation of calendar setting, to tracking fee and fine data. Even our cursory information about MNCIS suggests that the business practices and case-processing practices now largely controlled at the county level will need far greater statewide uniformity to make MNCIS operational and meet the high expectations for it.

**Some disputes
are better suited
to resolution
outside the
traditional
courtroom
process.**

ADJUDICATION ALTERNATIVES THAT AFFECT CASELOADS

In an effort to reduce the number of cases appearing in court and reduce the number of trials, courts and other criminal justice agencies have adopted several alternatives to formal adjudication (the traditional court process) for certain case types. To this end, the Minnesota judiciary's strategic plan has endorsed the expanded use of alternative forums to resolve disputes. The plan notes that some disputes are better suited to simplified nonadversarial forums for resolution.

³⁵ *Ibid.*, 35.

Further, alternative forums could relieve pressure on courts' caseload burden. Among the alternatives recommended in the strategic plan are diversion for certain criminal and juvenile offenders, and alternative dispute processes such as mediation, arbitration, or neutral third-party evaluation for family, harassment, and civil cases.³⁶

In our surveys, we asked judges and attorneys to rate the effectiveness of several alternatives or practices in reducing caseload burdens.³⁷ As shown in Table 5.12, we found that:

- **A majority of judges said that the use of quasi-judicial officers, mediation, and diversion before filing cases are effective in reducing caseload burdens. A majority of attorneys said that diverting cases either before or after they are filed is effective in reducing caseload burdens.**

Judges and attorneys differ somewhat over the practices they see as most effective in reducing caseload burdens. A higher percentage of judges than attorneys said mediation, arbitration, and neutral third-party evaluation are effective in reducing caseload burdens. Judges were also more likely than attorneys to view the use of

Table 5.12: Judge and Attorney Opinions About the Effectiveness of Practices to Reduce Caseload Burdens, 2000

Practice	Percentage of Judges Responding:				Percentage of Attorneys Responding:			
	<i>N</i>	Effective	Somewhat Effective	Ineffective	<i>N</i>	Effective	Somewhat Effective	Ineffective
Referees, hearing officers, judicial officers, or child support magistrates	184	65%	32%	4%	369	45%	46%	9%
Mediation	180	60	38	2	373	36	53	11
Diversion before the case is filed	157	50	43	8	354	55	30	15
Arbitration	153	48	46	6	311	30	55	15
Diversion after the case is filed	171	46	43	11	386	54	32	15
Continuances without prosecution or continuances for dismissal	184	43	48	9	417	58	29	13
Neutral third party evaluation	125	35	53	12	242	24	49	27
Other alternative dispute resolution processes, such as mini-trials	119	33	52	15	191	17	53	30
"Hip-pocket" filing, i.e., civil case proceeds without filing in court	67	33	34	33	256	42	41	16
Ordinance violations resolved administratively by city	82	30	30	39	202	47	31	22

SOURCE: Office of the Legislative Auditor's surveys of district court judges and attorneys, 2000.

³⁶ Minnesota Conference of Chief Judges, *Minnesota Courts Strategic Plan*, 28-30.

³⁷ We asked only about the effectiveness of these factors in reducing caseload burdens. There may be other issues to consider in determining whether the use of alternatives should be encouraged or expanded.

referees, judicial officers, hearing officers, or child support magistrates as effective. We discuss some of these alternatives below.

Referees, Judicial Officers, Hearing Officers, and Child Support Magistrates

As discussed in Chapter 1, Minnesota has a limited number of quasi-judicial employees who typically handle certain types of cases, allowing judges to spend greater time on more complex or serious cases. In response to a survey question, 52 percent of judges and 29 percent of attorneys with opinions said that referees, hearing officers, judicial officers, or child support magistrates are used often.³⁸ Moreover, as shown in Table 5.12, 65 percent of judges and 45 percent of attorneys said that these quasi-judicial officers are effective in reducing caseload burdens.

Alternative Dispute Resolution

Alternative dispute resolution is a term generally applied to attempts to settle noncriminal disputes outside of court. The most common forms of alternative dispute resolution are mediation and arbitration. In mediation, the parties to a dispute agree to meet separately or jointly with a mediator or facilitator who tries to reach a compromise acceptable to all. In arbitration, the parties present their case to a neutral arbitrator acceptable to both sides. The arbitrator then recommends a settlement. If the parties agree in advance to binding arbitration, the arbitrator's decision is final and the parties to the dispute are bound by the decision.

The advantage of mediation and arbitration for the parties to the dispute are that they probably resolve the dispute more quickly and more cheaply than if the case goes to trial.³⁹ The disadvantage is that both sides probably end up with less than they wanted. From the standpoint of the court, less judge time is involved and judges have more time for other cases. On the other hand, alternative dispute resolution may not be successful and the case may go to trial anyway. Studies of mediation for civil cases show a decrease in court workloads, but results for other types of cases are mixed.⁴⁰

Civil cases in Minnesota are subject to alternative dispute resolution, such as mediation or arbitration.

In general, chief judges we interviewed have favorable opinions of alternative dispute resolution in civil cases. Minnesota's *General Rules of Practice* say that all civil cases are subject to alternative dispute resolution and that court administrators must provide attorneys of record with information about alternative dispute resolution.⁴¹ The rules also require consideration of alternative dispute resolution in family law cases.⁴²

³⁸ Many judges underlined or circled "child support magistrates," suggesting that their response was only in reference to the magistrates.

³⁹ Some judges commented that mediation can itself be costly and that the cost discourages some individuals, especially in family disputes, from using mediation.

⁴⁰ Steelman, *Caseflow Management*, 167.

⁴¹ *Minnesota General Rules of Practice*, §114.01 and 114.03.

⁴² *Minnesota General Rules of Practice*, §310.01.

Courts do not keep records on the extent to which mediation or arbitration is used but our interviews with chief judges and our surveys of judges and lawyers suggest that they are encouraged and used frequently. Moreover, many judges, and to a lesser extent attorneys, believe that mediation and arbitration are effective in reducing caseload burdens. As shown in Table 5.12, 60 percent of judges and 36 percent of attorneys said that mediation is effective for this purpose and 48 percent of judges and 30 percent of attorneys said that arbitration is effective.⁴³ Most of the other respondents said that mediation and arbitration are somewhat effective. Few judges and attorneys said these alternative dispute resolution methods were ineffective in reducing caseload burdens.

Pretrial Diversion

Prosecutors may divert certain cases from prosecution when offenders agree to abide by predetermined conditions. Foremost among the conditions is that the offender does not repeat the crime or any other crime. The offender may also have to comply with other conditions such as paying restitution to the crime victim, performing community service, or completing a treatment program. In return for complying with the terms of the diversion program, the charges are usually dismissed. Diversion may be used for both juvenile and adult offenders. Prosecutors control pretrial diversion and, if it is successfully completed, the court may never see the case. Sometimes the diversion occurs after a case is filed. In these cases, judges approve the terms of the diversion agreed to by the prosecutor and defendant. Probation departments or private agencies often monitor offenders in the program.

Diversion by prosecutors helps reduce caseload burdens.

We were unable to determine the extent to which pretrial diversion is used. Although state law requires county attorneys to report the name of each adult and juvenile participant in a diversion program to the Bureau of Criminal Apprehension's Criminal Justice Information System, state officials told us that they do not have complete data for several reasons.⁴⁴ First, misdemeanors are not included in the data system. Second, only crime reports with a valid fingerprint card are entered into the database. Valid fingerprints are often missing, especially for juvenile offenders. Finally, even when a valid fingerprint card exists, it is not known how accurately county attorneys report information on diversion.

According to data from the State Court Administrator's Office on diversions occurring after cases were filed, 776 felony and 393 gross misdemeanors cases had court-approved diversion in 1999.⁴⁵ This represented 5 percent of the felonies and 2 percent of the gross misdemeanors. Data were unavailable for misdemeanors and petty misdemeanors, even though lower-level offenses are more typically candidates for diversion.

A minority of the judges and attorneys we surveyed said diversion is used often. Of the judges with an opinion, 58 percent said diversion before filing is used

⁴³ Far smaller shares of judges and attorneys rated other forms of alternative dispute resolution, such as "mock trials" to give parties an idea about how a jury might decide a case, as effective in reducing caseload burdens.

⁴⁴ *Minn. Stat.* (2000) §401.065, subd. 3a; and *Minn. Stat.* (2000) §388.24, subd. 4.

⁴⁵ Some of these dispositions might subsequently change if the defendant fails to abide by the conditions, resulting in a new disposition.

sometimes and 52 percent said diversion after the case is filed occurs sometimes. Among the attorneys, 51 percent said diversion before filing is rarely used and 51 percent said diversion after the cases are filed is used sometimes.⁴⁶

Attorneys are slightly more likely than judges to think that diversion is effective in reducing caseload burdens, although half or more of judges and attorneys with opinions said that diversion before filing is effective, as shown in Table 5.12. Among attorneys, fewer county prosecutors than other types of attorneys viewed diversion before filing as effective in reducing caseload burdens. In the case of diversion after the case is filed, 46 percent of the judges and 54 percent of the attorneys think it is effective in reducing caseload burdens. Again, fewer county prosecutors than other attorneys rated post-filing diversion as effective in reducing caseload burdens. Judges and attorneys expressed similar opinions about continuances without prosecution or continuances for dismissal. Relatively few judges and attorneys responded that diversion is ineffective in reducing caseload burdens.

Hip Pocket Filing

Minnesota is one of two states that allow one person to serve another with a lawsuit without first filing the suit with the court. This practice, known as “hip pocket filing,” allows parties to try to settle cases before the court becomes involved. One-third of the judges we surveyed and 42 percent of attorneys considered hip pocket filing effective in reducing caseloads.

Administrative Procedures for Ordinance Violations

As an alternative to prosecution, some cities have designed administrative processes to hear violations of certain local ordinances.

Some cities have adopted procedures permitting violations of local ordinances to be handled administratively instead of by criminal prosecution. City attorneys we talked with said that they developed administrative procedures for handling ordinance violations because courts were assigning a low priority to them and because judges were usually unfamiliar with the details of each city’s ordinances. Accused violators of city ordinances can either pay the fine, request an administrative hearing, or refuse to participate in the administrative process and instead go to court. A city government employee or an independent hearing officer hired by the city usually conducts the administrative hearings. If the violator refuses to participate or disagrees with the hearing officer, the city files the case in district court.

City attorneys said that these procedures for ordinance violations save the city time and the expense of court trials. To the extent that cases are not filed, they relieve pressure on the courts. Some judges we spoke with, however, questioned whether handling violations administratively is a violation of the separation of powers provision of the state constitution.⁴⁷ They do not believe that an executive branch agency should be performing a judicial function. On the other hand, city

⁴⁶ The responses were similar when we asked about the frequency of using continuances without prosecution or continuances for dismissal.

⁴⁷ *Minn. Const.*, art. 3, sec. 1.

attorneys said that their administrative ordinance procedures have never been challenged in court. They pointed out that the procedures are voluntary and anyone can refuse to participate by demanding their day in court.

We were unable to determine how many cities handle ordinance violations administratively, nor do we know how many cases are handled this way. In response to a question on our survey, 70 percent of judges and 62 percent of attorneys said that administrative procedures for handling ordinance violations are rarely used. Attorneys were more likely than judges to say that administrative handling of ordinances are effective in reducing caseload burdens. As Table 5.12 shows, 47 percent of the attorneys and 30 percent of the judges said that handling ordinance violations administratively is effective, and about 30 percent of each said it is somewhat effective.

Violations Bureaus

Some counties have established violations bureaus to collect fines for petty misdemeanors (usually traffic offenses). Most of the time, this consists of a collections window at the courthouse or another location where offenders can pay their fine. As noted in Chapter 1, however, Hennepin and Ramsey counties also employ hearing officers where individuals can claim mitigating circumstances and request that their fine be reduced or waived. Defendants who are not satisfied with the hearing officer's decision or who deny the allegation may still demand a court trial. Chief judges we interviewed felt that violations bureaus improved collection of fines while reducing court caseloads.

Violations bureaus can reduce the number of traffic offenses heard in court.



Hearing officers hear disputed traffic offenses in Ramsey and Hennepin counties.

JUDGE AND ATTORNEY VIEWS ON IMPROVING CASE PROCESSING

We asked judges and attorneys to describe steps that the courts or the Legislature could take to improve case processing. Table 5.13 lists the most common responses of judges and Table 5.14 lists attorneys' suggestions. The tables indicate that:

- **The most common suggestion made by both judges and attorneys for improving case processing is to increase the number of judges.**

To improve case processing, judges suggested increasing the numbers of judges and public defenders.

Table 5.13: Judge Suggestions on Improvements the Courts or Legislature Can Make to Case Processing, 2000

- The Legislature should fund or hire more judges (70 judges)
- The Legislature should fund or hire more public defenders (47)
- The Legislature should consider the impact of new laws on the courts before passing them (28)
- The Legislature should stop changing laws or procedural requirements every year (27)
- The Legislature or counties should fund more court support staff (22)
- The Legislature should stop trying to micromanage the courts (19)
- The Legislature should provide funding when passing new laws or requirements (18)
- The court should increase pay for law clerks (18)
- The Legislature should not pass laws with mandatory minimum sentences (16)
- The Legislature or counties should provide more funding for legal aid services and *pro se* litigants (14)
- The Legislature or counties should provide more funding for prosecutors (14)
- The Legislature or counties should provide more funding for technology (13)
- Courts should use individual assignment or the “block” system to schedule more cases (13)
- The Legislature should stop clogging the courts with laws to resolve petty disputes such as harassment laws (13)
- The Legislature or counties should provide more funding for the court system in general (12)
- Courts should make greater use of referees and hearing officers (11)
- The Legislature should stop expecting the courts to solve society’s problems (10)

NOTE: Numbers in parentheses indicate the number of judges who made that suggestion. Of the 215 judges who returned the survey, 188 made one or more comments or suggestions. The table includes suggestions made by at least ten judges.

SOURCE: Office of the Legislative Auditor’s survey of district court judges, 2000.

As we mentioned earlier, most judges and attorneys think that the court is processing cases efficiently while preserving justice and equity. However, many are also concerned that cases are being rushed through the system and that more time should be devoted to individual cases if people are to feel that their concerns are being heard.⁴⁸

Table 5.13 also shows that:

- **Many judges said that there is a shortage of public defenders.**

⁴⁸ Judges and attorneys submitted their responses to the survey before all of the 13 additional judge positions authorized by the 1999 Legislature were filled.

Table 5.14: Attorney Suggestions on Improvements the Courts or Legislature Can Make to Case Processing, 2000

To improve case processing, attorneys suggested hiring more judges, using more quasi-judicial personnel, or scheduling cases more efficiently.

- The Legislature should fund or hire more judges (101 attorneys)
- The courts should use more referees, magistrates, etc. or otherwise handle minor matters in another venue (74)
- The courts should schedule cases more efficiently or do a better job of adhering to their schedules (59)
- The court should foster better communication and respect among the parties appearing in cases (55)
- The courts should encourage greater use of mediation or other alternative dispute resolution techniques (51)
- The Legislature should stop making more laws or changing existing laws (50)
- The Legislature or counties should fund more court support staff (41)
- The Legislature should stop increasing penalties for offenses or decriminalize some offenses (35)
- Judges should spend more time in court hearing cases and less time doing other things (33)
- The Legislature or the courts should reduce or simplify procedural requirements (32)
- Courts should make better use of technology, including conference calls (29)
- Courts should use individual assignment or the “block” system to schedule more cases (26)
- Courts should encourage greater use of diversion (26)
- Judges should specialize more and rotate less (20)
- The Legislature should not pass laws with mandatory minimum sentences (19)
- The Legislature or counties should fund or hire more public defenders (18)
- The courts should shorten time frames allowed (18)
- The courts should be more concerned with justice rather than efficiency (17)
- The Legislature should stop interfering with the courts (15)

NOTE: Numbers in parentheses indicate the number of attorneys who made that suggestion. Of the 577 attorneys who returned the survey, 418 made one or more comments or suggestions. The table includes suggestions made by at least 15 attorneys.

SOURCE: Office of the Legislative Auditor’s survey of attorneys, 2000.

Forty-seven judges suggested that the Legislature should fund more public defenders and many attorneys agreed. In addition, 14 judges said that funding should be increased to pay for legal aid services for *pro se* litigants and low-income participants in noncriminal proceedings such as family cases. Fourteen judges⁴⁹ also said that more funding is needed to increase the number of prosecutors.

Several judges and attorneys also see a need for more court support staff. In particular, many judges believe that the Legislature should increase salaries for

⁴⁹ In addition, 11 attorneys said that the courts or the Legislature should hire or fund more prosecutors, 4 said more defense attorneys are needed, and 2 simply said more attorneys are needed.

Judges said it was difficult to recruit qualified law clerks because of low pay.

law clerks.⁵⁰ Several chief judges whom we interviewed said it is becoming difficult to recruit qualified law clerks, especially in rural areas.

Attorneys and judges also have suggestions about laws that the Legislature passes. Generally speaking, judges, and to a lesser extent attorneys, believe that the Legislature should not attempt to tell the court how to do its job. For example, many judges and attorneys believe that the Legislature should refrain from frequently changing the laws or procedural requirements. In their view, in many instances, laws change as soon as legal precedents are established and a consensus develops about how to apply them.

Judges also feel that the Legislature should consider the impact of new laws and procedural requirements on caseloads and the time judges have to devote to cases. Some judges and attorneys also believe that mandatory minimum sentences make it more difficult for the courts to process cases in a timely manner because they remove incentives for defendants to settle cases.

Table 5.14 also indicates that many attorneys believe that the courts should use existing resources to schedule cases more efficiently. Some attorneys said that the courts could foster better communication and respect among the parties appearing in a case. Some attorneys suggested that the court should encourage greater use of alternative dispute resolution. Attorneys also said that judges should spend more time in court hearing cases and less time doing other things.

Some attorneys and some judges think that more courts should move to a “block” or individual case assignment system and some attorneys would like to see more specialization by judges. Both attorneys and judges see a need for greater use of referees, magistrates, or hearing officers to handle minor cases such as juvenile status offenses, conciliation court, or uncontested divorces. Some judges and attorneys also see a need for more use of technology in the courts.

⁵⁰ *Minn. Stat.* (2000) 480.181, subd. 1 allows the Supreme Court to establish pay scales for law clerks. The pay range for law clerks for fiscal year 2001 is \$26,706 to \$38,158 per year.

