



# **West Virginia Circuit Court Judicial Workload Assessment**

**Final Report**

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Project Staff:

Brenda K. Uekert, Project Director

John Douglas  
Richard Schauffler  
Matthew Kleiman  
Scott Maggard  
Paul Stenbjorn

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# Executive Summary

**H**ow many circuit court judges are needed to provide effective case resolution for the people of the State of West Virginia? To answer this question, the Administrative Office of the Courts, Supreme Court of Appeals, West Virginia, contracted with the National Center for State Courts (NCSC) to determine how to measure judicial workload in the West Virginia Circuit courts. A clear measure of court workload is central to establish the judges needed to resolve all cases coming before the court. Adequate resources are essential if the West Virginia judiciary is to manage and resolve court business effectively and without delay while also delivering quality service to the public. Meeting these challenges involves systematically assessing the number of judges required to handle the caseload and resolving whether judicial resources are allocated equitably across the state.

West Virginia has historically used the weighted caseload method for this purpose. Weighted caseload is a proven and highly effective strategy, but the results must be periodically examined and updated to ensure ongoing public trust and confidence in the courts. An earlier weighted caseload study was conducted by the National Center for State Courts in 1998. This report relies on many of the case weights established in the earlier study, while refining the data to account for several additional case types added to the Circuit Court caseload since 1998. The primary project goal was to update the weighted caseload study to reflect current practices and case filings.

## ***The challenge of judicial workload assessment***

The principal challenge to conducting a new study of judge need is that judicial resources are not sufficient to keep up with an increasingly complex caseload. Examining seven case types that were similarly defined over the course of time, there has been an increase of 9 percent in case filings from 1997 to 2005. Moreover, the case type that requires the largest amount of judicial time to ensure an equitable resolution—child abuse and neglect—increased substantially (see Exhibit 1).

### **Exhibit 1: Case Filings for Common Case Types, 1997 to 2005**

<b><u>Case Type</u></b>	<b><u>1997</u></b>	<b><u>2005</u></b>	<b><u>Change</u></b>
Felony	4,819	6,274	30.2%
Misdemeanor	878	716	-18.5%
Criminal Appeals	2,264	397	-82.5%
Delinquency	6,144	5,411	-11.9%
Child Abuse/ Neglect <sup>1</sup>	801	1,332	66.3%
General Civil	16,382	18,239	11.3%
Other Civil	4,867	6,873	41.2%
<b>Total</b>	<b>36,155</b>	<b>39,242</b>	<b>8.5%</b>

When workload rises faster than judges, judges are forced to spend less time per case if they are to stay current with incoming work. In some instances, revised procedures or new technology support faster case processing with no loss in quality. For other case types, the result is just more cases squeezed onto already crowded dockets. This reduction in time per case, based solely on rising volume, is called “case weight erosion.” Augmenting the problem for certain types of cases is new dockets. This reduction in time per case,

<sup>1</sup> In 1997, each family unit was considered a single case of child abuse and neglect. Since then, standards have called for each child to be counted as a single case. Case filings for 2005 were adjusted to account for the change in the way cases were counted. Originally, there were 2,278 child abuse and neglect case filings in 2005. This figure was adjusted to 1,332 cases, based on an average of 1.71 children per family with children in West Virginia (U.S. Bureau of the Census).

based solely on rising volume, is called “case weight erosion.” Augmenting the problem for certain types of cases is new legislation that requires greater judicial time and attention if the rule as well as the spirit of the law is to be met.

As workload rises, judges can and do work faster; the issue is distinguishing how best to allocate scarce judicial resources across the vast array of cases coming before the court. Some cases can do with less judge time, but some need more. The challenge is to provide judges sufficient time to *reasonably* engage litigants, listen to victims, clearly explain rulings and orders—features fundamental to the public perception of fairness and appropriate treatment by the court.

Translating judicial workload into an estimate of judicial need requires that the weighted caseload study determine:

- Case weights—the average amount of time reasonably needed by a judge to resolve a case of a specific type.
- Judge year value—the amount of time per year that a well-trained and efficient judge has available to do case-related work (less time spent on non-case related activities such as travel and administrative activities).

To produce an estimate of judicial workload, the case weights are multiplied by case filings. Judge need is estimated when workload is divided by the judge year value.

### ***Results from the 2006 study***

All aspects of the 2006 study were overseen and guided by the Circuit Court Judges’ Realignment Committee. In addressing the issue of judicial need, the Committee focused on resolving the tension between efforts to enhance the quality of justice and efforts to ensure the efficient use of existing judicial resources. To accomplish this goal, numerous innovations to the traditional weighted caseload model were implemented in 2006.

- Judicial members of the realignment committee met in July 2006, where they determined case weights for five different case types.
- Information on travel vouchers was collected to document the amount of time spent in travel, which necessarily affects the amount of time available to hear cases. Based on this data, circuits were categorized into low, medium, and high-travel circuits.
- Data on new case types were collected over an 8-week period and extrapolated to determine an annual figure. The final data were confirmed by circuit court judges, thus providing an accurate figure on which to calculate case weights.
- Mass litigation cases, currently handled by an expert panel of 6 judges, with additional help from 3 judges, were addressed in a separate study in recognition of the complexity of this type of case. Although these cases require substantial judicial resources, the cases cannot be included in any particular circuit and, therefore, are not included in this judicial workload assessment.

The Committee reviewed information from all phases of the study to reach final consensus on the judge year value, case weights and statewide judicial need.

- The standard value for the number of judicial working days was 209 days, consistent with the 1998 study. This figure accounts for holidays, vacation days, sick days, and days devoted to education or conferences.
- Within the “standard judge day” of 8 hours per day, the amount of the work day that is devoted solely to processing cases is 6.5 hours in low-travel circuits, with appropriate adjustments made for medium- and high-travel circuits. Remaining time, approximately 90 minutes per day, was spent in travel and handling non-case related judicial tasks.<sup>2</sup>

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<sup>2</sup> The standard judge day does not reflect the current practice among West Virginia judges of spending much greater than eight hours performing judicial matters. Neither does the standard judge day include judge time spent on special projects, such as teaching at Court and Bar sponsored conferences, performing special assignments, or serving on national, state, and local committees, including serving on the Realignment Committee.

The committee determined that the weights established in the 1998 study were consistent with 2006 standards. The accepted weights include the following.

<b>Case Type</b>	<b>Case Weight (average minutes)</b>
Felony	166.0
Misdemeanor	126.8
Criminal appeals from magistrate court	72.8
Delinquency	97.7
Child abuse and neglect	585.0
General civil	174.6
Other civil	55.0

The committee established weights for five additional case types. The final weights, which were adjusted to account for the proportion of proceedings that progress from preliminary matters to final hearings and enforcement actions, are shown below.

<b>Case Type</b>	<b>Case Weight (average minutes)</b>
Family protective order	45.0
Family protective appeals from family court	64.3
Other appeals from family court	95.8
Original jurisdiction cases from family court	60.2
Overlap cases	46.5

All adjustments were accompanied by clearly articulated rationale and justification.

Applying the 2006 case weights to current filings and dividing by the average judge year value gives the judge need shown in Exhibit 2. Total need for the state is estimated at 77.5, an increase of 11.5 judgeships over the existing complement of 66 circuit court judges. Without considering the number of current judge positions, the circuits with a judge need greater than 1 are 13, 23, 9, and 24.

The availability of data from 1997 allows for comparisons over time. Exhibit 3 ranks the circuits by a concept known as “judge need ratio.” The ratio, defined as the implied judge need divided by the actual number of judges, reflects the actual workload of judges. For example, if a circuit has 2 judges, but has a judge need of 3 judges,

then each judge is essentially handling 1.5 times as many cases as should be expected. A judge need ratio greater than 1.0 indicates that a judge’s workload is higher than the level expected. The 2006 results, using the per judge approach, show that circuits 24 and 30 have the highest judge need ratio. The results are consistent with the 1998 results—in each case, one judge is handling the caseload that would be expected to be handled by two judges.

#### **Conclusions from the 2006 study:**

- ◆ Total judge need for West Virginia is 77.5 judges, an increase of 11.5 judgeships over the current 66 circuit court judges.
- ◆ Without considering the number of current judge positions, the circuits with a judge need greater than 1 are 13, 23, 9, and 24.
- ◆ Using an actual workload per judge approach (a judge to need ratio), the circuits with the greatest need for additional judges include circuits 24 and 30.

#### **Maintaining System Integrity**

The potential for keeping the case weights current has been enhanced considerably with the 2006 study. Each workload standard is constructed by compiling information on three distinct case event categories: preliminary matters, final hearings, and enforcement actions. It is possible to assess the validity and reasonableness of each workload standard by examining this event-level information. Over time, adjustments can be made to the case weights at the event level to incorporate changes required to comply with new court rules, mandated legislation, and improved case processing strategies. This targeted adjustment strategy will ensure that the case weights continue to provide an accurate reflection of judicial workload in West Virginia and help allay the need for conducting the complete, expensive and time consuming workload assessment process.

**Exhibit 2: Total Judicial Need**

<b>Judicial Circuit</b>	<b>2006 Judges</b>	<b>Judge Need</b>	<b>Difference</b>
1	4	4.75	+ 0.75
2	2	2.13	+ 0.13
3	1	0.97	- 0.03
4	3	3.03	+ 0.03
5	2	2.72	+ 0.72
6	4	4.75	+ 0.75
7	2	1.91	- 0.09
8	2	1.47	- 0.53
9	2	3.53	+ 1.53
10	3	3.91	+ 0.91
11	2	2.01	+ 0.01
12	2	1.69	- 0.31
13	7	9.74	+ 2.74
14	2	1.81	- 0.19
15	3	2.52	- 0.48
16	2	1.95	- 0.05
17	2	2.45	+ 0.45
18	1	0.94	- 0.06
19	1	1.30	+ 0.30
20	1	1.24	+ 0.24
21	2	1.54	- 0.46
22	1	1.64	+ 0.64
23	5	6.68	+ 1.68
24	1	2.09	+ 1.09
25	2	2.43	+ 0.43
26	1	1.33	+ 0.33
27	1	1.30	+ 0.30
28	1	1.10	+ 0.10
29	2	1.84	- 0.16
30	1	1.88	+ 0.88
31	1	0.87	- 0.13
<b>Overall</b>	<b>66</b>	<b>77.53</b>	<b>+ 11.53</b>

**Exhibit 3: Circuit Court Rankings by Judge Need Ratio (implied need/actual # judges)**

<b>Circuit</b>	<b>2006 Rank</b>	<b>Judge Need Ratio</b>	<b>1998 Rank</b>	<b>Judge Need Ratio</b>
24	1	2.09	2	1.66
30	2	1.88	1	1.97
9	3	1.77	7	1.34
22	4	1.64	12	1.13
13	5	1.39	3	1.57
5	6	1.36	4	1.48
23	7	1.34	5	1.39
26	8	1.33	11	1.16
10	9	1.30	6	1.36
19	10	1.30	13	1.12
27	11	1.30	16	0.96
20	12	1.24	15	1.05
17	13	1.23	10	1.18
25	14	1.22	20	0.91
1	15	1.19	18	0.95
6	16	1.19	9	1.31
28	17	1.10	25	0.81
2	18	1.07	17	0.95
4	19	1.01	24	0.81
11	20	1.01	26	0.76
16	21	0.98	19	0.94
3	22	0.97	31	0.59
7	23	0.96	22	0.85
18	24	0.94	21	0.88
29	25	0.92	14	1.07
14	26	0.91	28	0.71
31	27	0.87	23	0.82
12	28	0.85	27	0.76
15	29	0.84	8	1.32
21	30	0.77	30	0.67
8	31	0.74	29	0.71

Note: Judge Need Ratio = Implied Need / Actual # Judges

# Chapter 1. Introduction

A clear measure of court workload is central to determining how many judges are needed to resolve all cases coming before the court. Adequate resources are essential if the West Virginia judiciary is to manage and resolve court business without delay while also delivering quality service to the public. Meeting these challenges involves assessing objectively the number of judges required to handle the caseload and whether judicial resources are being allocated and used prudently. West Virginia first employed the weighted caseload methodology in 1998. Weighted caseload is a very effective tool for determining the need for judges and requesting new judgeships, assigning temporary and/or retired judges, conducting workload analyses for assignment and calendaring systems, designating chambers assignments, and designating cross-district judge assignments.

The use of weighted caseload is a “best practice.” State court caseloads vary in complexity, and different types of cases require different amounts of judicial time and attention. While case counts have a role in determining the demands placed on our state judicial systems, they are silent about the judicial resources needed to process this vast array of cases effectively. That is, raw, unadjusted case filing numbers offer only minimal guidance as to the amount of judicial *work* generated by those case filings. Moreover, the inability to differentiate the work associated with each case type creates the potential for the misperception that equal numbers of cases filed for two different case types result in equivalent workloads. For example, a “typical” child abuse and neglect case has a greater impact on judicial

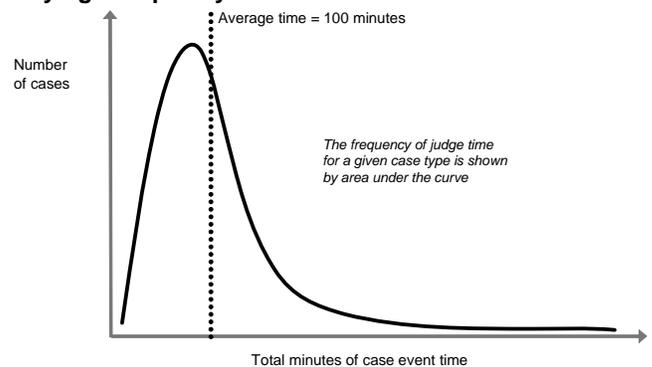
resources than a “typical” civil case. For this reason, the NCSC believes that a comprehensive program of judicial workload assessment is the *best* method for measuring case complexity and determining the need for judges.<sup>3</sup>

**The goal of the Circuit Court Realignment Committee is:**

*To provide the citizens of West Virginia with a properly staffed judiciary committed to dispensing equal justice and service in an efficient and timely manner and to promoting judicial excellence to increase the public's trust and confidence in the judiciary. The committee's process will be open, impartial, independent and fair, and will utilize a neutral and professional consultant.*

Workload, as measured by the individual case weights, represents the *average* number of minutes of judge time that it takes to resolve cases of different types. A particular case weight (say, 166 minutes for a felony case type) does not imply that all felony cases take 166 minutes to resolve; rather it is the average time for that type of case. The curve shown in Exhibit 4 represents the actual distribution of judge time for a particular type of case and makes clear individual cases take different amounts of time.

**Exhibit 4: Case Weights Accommodate Cases of Varying Complexity**



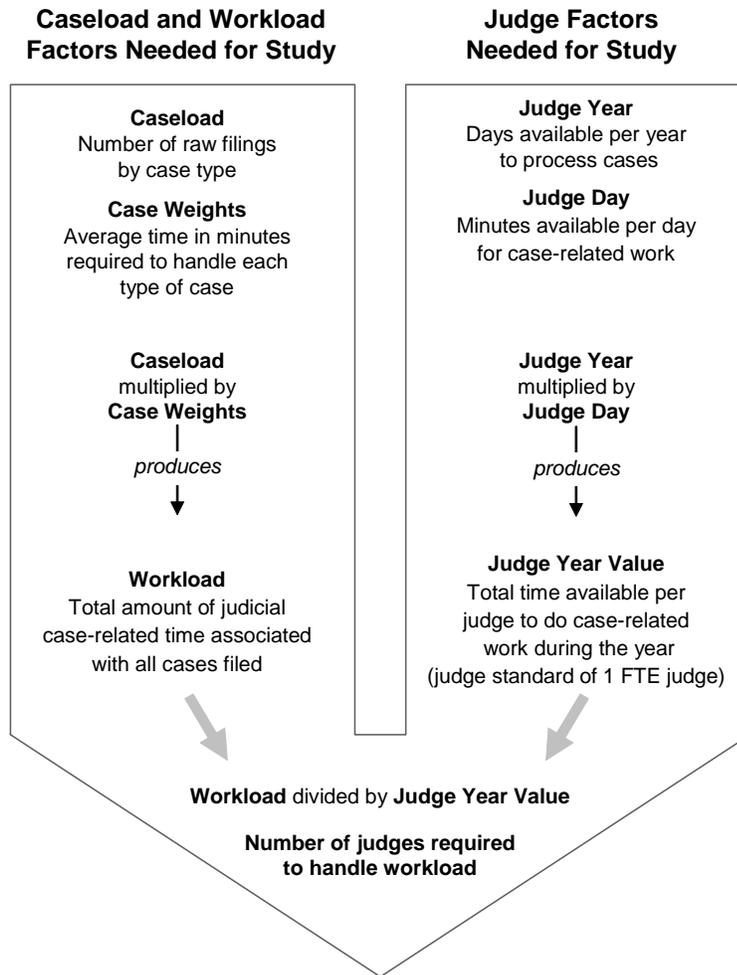
<sup>3</sup> V. Flango and B. Ostrom, *Assessing the Need for Judges and Court Support Staff* (National Center for State Courts, 1996).

The utility of a case weight is that it summarizes” the variation in judicial time by specifying or recommending an average amount of time per case. The preferred approach is to calculate the case weight based on current judicial practice (as determined by a time study) and then review (and potentially adjust particular weights) to ensure judges have sufficient time to handle cases in a reasonable and satisfactory manner. If a time study cannot be conducted, then an expert panel of judges should be convened to estimate average

times devoted to case events. Some cases take more time than the case weight and some take less time, but, on average, the case weight is an accurate reflection of the typical amount of time judges take (or should take) to resolve specific types of cases.

Once developed, the weights are used to calculate the total judicial workload for each case type by multiplying the number of filings by the case weight. Exhibit 5 provides a summary of the overall procedure:

**Exhibit 5: Caseload to Workload**



As mentioned earlier, workload is the product of case filings of a given case type multiplied by the case weight for that case type. Total workload is then calculated by summing across all case types. To estimate the number of judges required, the total calculated workload is divided by the judge year value (the amount of time a judge has to do case-related work). The estimated number of judges is obtained by dividing total workload by the judge year value.

As part of the 2006 study, the Circuit Court Judges' Realignment Committee voted to maintain the "standard judge year" at 209 days. For each day, a distinction is made between case-related and non-case related time. From the standard judge day of 8 hours per day, non-case related time—including time spent on court administrative matters, travel, general legal research, and other non case related duties—is subtracted to arrive at the number of minutes per day that a judge has available to do case related work. The standard judge day does not reflect the current practice among West Virginia judges of spending much greater than eight hours performing judicial matters. Neither does the standard judge day include judge time spent on special projects, such as teaching at Court and Bar sponsored conferences, performing special assignments, or serving on national, state, and local committees, including serving on the Realignment Committee. The Committee chose to keep the earlier estimate of 6.5 hours devoted directly to processing cases, with adjustments made in those circuits that require significant travel between counties.

Care must be taken when designing a method to update existing case weights in order to avoid the very real issue of "case weight erosion." Over time, workload often rises more quickly than judicial resources. Judges are therefore pushed to work faster if they hope to stay current with incoming caseloads. As a result, the average amount of time judges are able to spend on cases falls. A new time study conducted in this environment will show that judges are spending less time on cases and, if new case weights are based solely on current practice, lock estimates of judicial resource need into tighter and tighter timeframes. Cases are being disposed, but concern rises that available judge time is not sufficient to provide fair and equitable service to the public. The result is that

many judges feel that they are working on an assembly line.

For this reason, an adequacy of time survey was designed to capture whether current time spent on various events is sufficient. The survey uses a Likert scale to assess the adequacy of time with respect to preliminary matters, final hearings, post-hearing activities, and general court management. Results from the survey can be used to adjust case weights. For instance, if the majority of judges find that they seldom have enough time to gather information necessary for calculation of child support, then the case weight can be adjusted upward. The final workload standards, while taking into account current practices, must reflect quality of justice standards.

#### **Recommended characteristics of final workload standards**

The final workload standards should:

- ◆ Be firmly based in the reality of the court. By doing so, the workload standards build on current practice – the average amount of time judges currently spend processing all cases of a particular type.
- ◆ Allow sufficient time for equitable and quality case resolution.
- ◆ Take into account the time judges are required to apply to overall court management and quality performance, not merely bench time for hearing cases.
- ◆ Be credible to outside observers as well as to judges. Grounding the standards in current practice and expert opinion about how long cases should take provides a strong base of credibility.

Updating the weighted caseload study offers the judicial branch the opportunity to engage in a systematic and structured process to assess the reasonableness of current practice; that is, do judges and judicial officers have sufficient time to resolve cases in a satisfactory and timely manner? Moreover, an appropriately designed workload-based model has the advantage of providing objective and standardized assessments of judicial resource needs among jurisdictions that vary in population and caseload.

The NCSC and the Administrative Office of the Courts staff worked closely with the Circuit Court Judges' Realignment Committee to develop a comprehensive and cost-effective workload assessment strategy to:

- Design and implement a multi-method approach for determining judicial need based on judicial workload.
- Construct a set of judicial workload standards that incorporate current practice for the Circuit Court (as measured by a survey of Realignment Committee members).
- Consider the impact of mass litigation cases by surveying the six-member judicial mass litigation panel.
- Develop a method to assess and, where needed to improve the quality of justice, revise the standards based on expert judicial opinion (the Delphi decision-making process).
- Validate the workload standards.
- Produce a final set of quality-adjusted workload standards that can be applied statewide.

To meet the above project goals, the NCSC, in close collaboration with the Realignment Committee, designed the process to be straightforward and easy to understand; to make extensive use of existing data sources; to minimize the impact on the judiciary and the need for original data collection; to produce a measure of judicial workload that is clear; to be grounded in experience and easy to update; and to lead to the support and “ownership” by legislators and judges. Based on the results of this project, the West Virginia Supreme Court will be able to assess the need for judges based on judicial workload, with differences in workload tied to differences in the complexity of cases.

# Chapter 2: Research Design

**W**orkload assessment is essentially a study of supply and demand. How does the workload demand generated by different types of cases compare to the supply of judge time available to do the work? Three fundamental pieces of information are needed to answer this question:

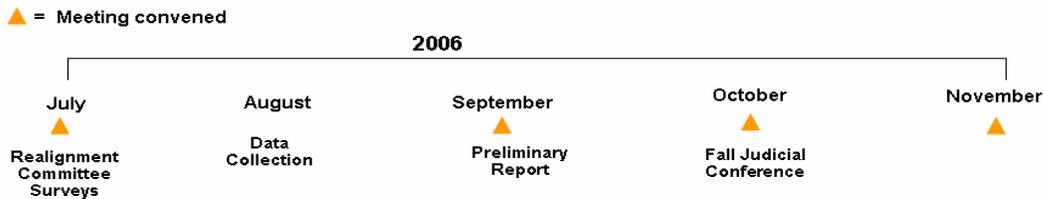
1. *Case filings.* Filings data were collected and compiled by the AOC for all 31 court circuits. Case filings for 2005 were used; with the exception that data on the newer case types were gathered on a weekly basis over an 8-week period and then extrapolated to annual figures.<sup>4</sup>
2. *Judge year value.* This value is the amount of time per year that a judge has available to process his or her workload. The 1998 judge year value (1,359 hours per year) was incorporated into the 2006 assessment. This figure is based on the number of judge days (209 days) multiplied by the number of hours per day spent directly on the disposition of cases (6.5 hours).

3. *Individual case workload standards.* These standards, or case weights, represent the average amount of time sufficient for judges to resolve each type of case in an efficient and effective manner. Seven of the 2006 case types used the weights that were originally developed by the 1998 time study, with some modification made for child abuse and neglect cases.<sup>5</sup> Judicial members of the Realignment Committee determined workload standards for five new case types.

For the 2006 study, the primary goal was to formulate the desirable workload for judges to resolve different types of cases in an *efficient* and *effective* manner.<sup>6</sup> The timeline for the completion of the project was limited—the project began in July 2006 and was completed four months later. Exhibit 6 shows the milestones and timeline.

**Exhibit 6. Milestones and Timeline**

## West Virginia Circuit Court Judicial Needs Assessment Project



<sup>4</sup> Data were collected over an 8-week period for the following case types: family protective orders, family protective order appeals from family court, other appeals from family court, original jurisdiction cases from family court, and overlap cases.

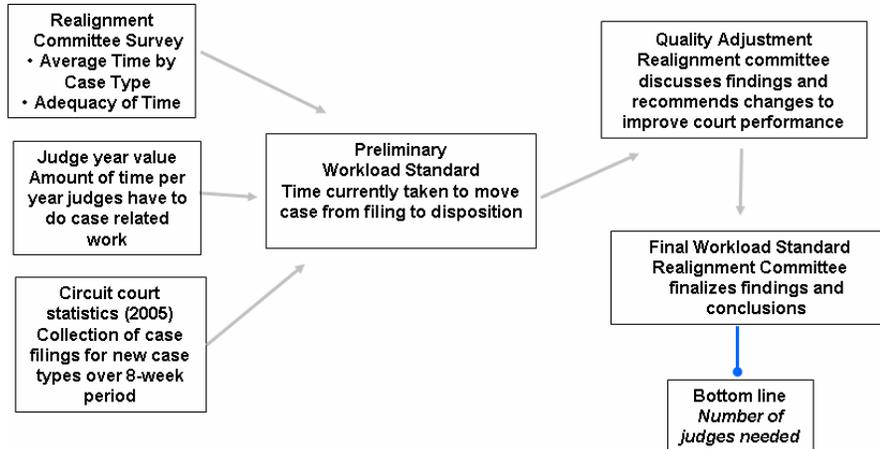
<sup>5</sup> In 1998, each family was considered a single abuse and neglect case. In 2006, consistent with national standards, each child in a neglect and abuse proceeding was counted as a separate case. The change in counting artificially exaggerated the 2006 figures.

<sup>6</sup> The Circuit Court Judges' Realignment Committee met several times over the course of this project to develop the case weights for new categories of case types, determine the adequacy of time, discuss the impact of case weights on statewide workload, and evaluate findings from this study.

The approach to judicial workload adopted in this study provided members of the Realignment Committee with a structured process to assess the reasonableness of current case processing

practices. The basic parts of the study are show in Exhibit 7, with each part discussed in greater detail below.

**Exhibit 7: Project Overview**



**Time Survey**

Ideally, a statewide time study would be conducted to determine the actual amount of time judges spend on particular activities by case type. Such a time study was last conducted in West Virginia in 1998. The time and financial constraints of the current project required alternatives to a full-scale time study. The 2006 study relied on the expertise and experience of the judicial members of the Circuit Court Realignment Committee.

Two surveys of Realignment Committee members were conducted to estimate case weights for new case types and to gauge the adequacy of time. In the first survey, committee members were asked to estimate the amount of time spent on preliminary matters, final hearings, and enforcement action for 5 new case types: family protective orders, family protective appeals from family court, other appeals from family court, original jurisdiction cases from family court, and overlap cases. The results

were then averaged and weighted according to the proportion of cases that experienced each case event. The final weights are shown below.

Case Type	Case Weight (average minutes)
Family protective order	45.0
Family protective appeals from family court	64.3
Other appeals from family court	95.8
Original jurisdiction cases from family court	60.2
Overlap cases	46.5

In the second survey, judicial members of the Realignment Committee completed an adequacy of time form. The goal of this survey was to document judicial perception of the adequacy of time as related to specific aspects of case management and administration. Exhibit 8 provides the detailed results of the adequacy of time survey.

**Exhibit 8: Results of Adequacy of Time Survey**

**I generally have enough time . . .**

	Almost Never	Very Seldom	Seldom	Occasionally	Frequently	Very Frequently	Almost Always	I usually do not do this	n	Average
<b>With Respect to Preliminary Matters:</b>										
1	1	2	3	4	5	6	7	x	11	4.0
2	1	2	3	4	5	6	7	x	12	3.9
3	1	2	3	4	5	6	7	x	12	3.1
4	1	2	3	4	5	6	7	x	12	3.5
5	1	2	3	4	5	6	7	x	12	3.8
6	1	2	3	4	5	6	7	x	11	3.5
7	1	2	3	4	5	6	7	x	12	3.3
8	1	2	3	4	5	6	7	x	12	4.5
9	1	2	3	4	5	6	7	x	12	3.3
10	1	2	3	4	5	6	7	x	12	4.5
11	1	2	3	4	5	6	7	x	12	2.7
<b>With Respect to Final Hearings</b>										
12	1	2	3	4	5	6	7	x	12	3.6
13	1	2	3	4	5	6	7	x	12	4.2
14	1	2	3	4	5	6	7	x	12	2.3
15	1	2	3	4	5	6	7	x	12	2.6
16	1	2	3	4	5	6	7	x	11	2.5
<b>With Respect to Post-Hearing Activities:</b>										
17	1	2	3	4	5	6	7	x	12	4.3
18	1	2	3	4	5	6	7	x	11	3.5
19	1	2	3	4	5	6	7	x	12	3.8
20	1	2	3	4	5	6	7	x	12	3.9
21	1	2	3	4	5	6	7	x	11	3.1
<b>With Respect to General Court Management</b>										
22	1	2	3	4	5	6	7	x	12	3.4
23	1	2	3	4	5	6	7	x	12	3.0
24	1	2	3	4	5	6	7	x	12	2.8
25	1	2	3	4	5	6	7	x	12	3.5
26	1	2	3	4	5	6	7	x	12	2.7
27	1	2	3	4	5	6	7	x	12	2.7

**Findings from the Adequacy of Time Survey**

- ◆ Generally, judges do not feel they have an adequate amount of time to properly handle cases and manage the court.
- ◆ Seven items were scored less than '3.' Judges very seldom had enough time to:
  1. Gather information necessary for calculation of child support
  2. Confer with appropriate agencies
  3. Calculate child support
  4. Monitor timeliness of required case events
  5. Participate in public outreach and education
  6. Review recent court decisions and new legislation
  7. Conduct general and legal research

**Judge Year Value**

The non-case related data were used in the calculation of the judge year values.

The judge year value was identical to that used in the 1998 study: Judge year (209 days) x Case-related judge day (6.5 hours) = Judge year value of 1,359 hours per year that each judge can spend directly on the disposition of cases.

**Case Filings**

The West Virginia AOC provided case filing data. Upon review by the AOC and the Realignment Committee, the accuracy of case

filing data were determined to be weak in all of the newer case types (family protective orders, family protective appeals from family court, other appeals from family court, original jurisdiction cases from family court, and overlap cases). To improve data quality for these case types, the West Virginia AOC collected data from each Circuit Court on a weekly basis over an 8-week period. The filings were then extrapolated to an annual basis. Consequently, the case filing data used in this assessment are a combination of actual 2005 data and extrapolated 2006 filings for the newer case types.

**Study Adjustments**

On September 22, members of the Realignment Committee held a conference call with the research team from the National Center for State Courts to discuss preliminary results. The resulting conversation called for a modification of the assessment based on two factors:

1. Changes in the way child abuse and neglect cases are counted.
2. Excessive travel time required in some circuits.

In 1997, each family unit was counted as a single child abuse and neglect case, regardless of the number of children involved in court

proceedings. Since that time, national standards have been developed that stress that each child be treated and counted as a separate abuse and neglect case. Most circuits in West Virginia now abide by those national standards.

A consequence of the change in counting standards caused an artificial increase in the number of child abuse and neglect cases (the number of cases increased from 801 in 1997 to 2,278 in 2005). The original case weight for child abuse and neglect (595 minutes) was based on counting the family as a case, not each child. Consequently, the number of abuse and neglect filings for 2005 had to be modified to reflect the change in counting standards.

Ideally, an automated system would track the number of children per parent involved in abuse and neglect hearings. Such data would allow a concise formulation that would allow the research team to make the 2005 case filing data consistent with that used in 1997. However, the circuit court does not have the technology or capacity to determine exactly how many children are in each family unit involved in abuse and neglect proceedings.

The lack of actual data required the use of a proxy. In this case, the U.S. Bureau of the Census documents the average number of children per family with children. In West Virginia, this figure is 1.71 children. While the number of children per family involved in an abuse and neglect case may be higher or lower than this figure, 1.71 children per family offers an estimate based on official government data. Thus, the 2006 filings for child abuse and neglect cases were modified to 1,332 cases (2,278/1.71) for the purposes of this workload assessment only.

The second aspect of the current workload assessment that required attention was travel time. The 1998 time study was deemed inadequate in terms of accounting for high levels of travel. To compensate for this weakness, the AOC compiled work-related travel miles from travel vouchers for the previous year. Using an average of 40 miles per hour, the miles were converted into the average amount of time each judge spent on travel.

Essentially, the calculation of actual time devoted to travel is an estimate because it is not based on a time study. Consequently, a conservative estimate was used to modify the judge day for 11 circuits.

#### Adjustments for Travel

- ◆ The typical judge day in West Virginia is 6.5 hours. This is the number of hours that judges can devote to hearing cases. The remaining 1.5 hours are spent in travel and handling administrative tasks.
- ◆ The judge day for 5 circuits was adjusted to 6.25 hours to account for an average of 15 to 30 minutes in travel each day. The circuits include 2, 11, 19, 21, and 26.
- ◆ The judge day for 6 circuits was adjusted to 6.0 hours to account for the fact that judges in these circuits spend, on average, at least 30 minutes in travel. The circuits include 1, 3, 5, 14, 22, and 31.

#### Determining the final judge need

The Realignment Committee met in October to review preliminary findings and determine if further adjustments or modifications to the assessment were needed. Two factors that must be considered throughout this project are:

1. The current level of need is based on current practices. It does not take into account modifications aimed at improving practices.
2. The analysis does not include the work carried out by the Mass Litigation Panel. The panel consists of six experienced judges, who are expected to hear mass litigation cases *in addition* to their typical caseload.

The Realignment Committee recognizes the limitations of the current assessment. In particular, the lack of a statewide time study required reliance on case weights developed in 1998 and estimates provided by Committee members for the new case types. The application of 1998 weights was especially problematic in child abuse and neglect cases, because of a change in the way cases are counted. However, the adjustment of filing data, the collection of more accurate case filings, and the inclusion of accommodations made for high travel circuits added refinements to the process that add to the credibility of the findings.

In conclusion, the benefits of the weighted caseload model are many. The model can be used as a tool to provide a benchmark for comparison among judicial circuits and as a planning tool to help ensure equity in judicial resources across the state. Beyond providing an objective measure of statewide judicial need, the weighted caseload results can also be extended to examine variation in local practice. The results can be used in concert with other considerations, including budget constraints, projected filing trends, and differences in local case processing practices that may differentially affect the need for judicial resources statewide.

# Chapter 3: Results

The calculation of judge need requires four elements. First, the case weight standards must be determined for each case type handled by the circuit courts. Second, case filings by circuit must be compiled and verified for accuracy. Third, judge year must be built into the equation, with appropriate modifications to account for travel. Fourth, current judicial staffing by circuit must be documented. The inclusion of these elements in a standard mathematical formula results in a concept known as judge need. Judge need is the amount of judges that are needed to handle the current caseload properly.

## Case Weight Standards

The 2006 case weights are shown in Exhibit 9 for each of the 12 case types. The weights for felony, misdemeanor, criminal appeals from magistrate court, delinquency, child abuse and neglect, general civil, and other civil cases were established through a time study in 1998. The weights for the remaining case types (family protective order, family protective appeals from family court, other appeals from family court, original jurisdiction cases from family court, and overlap cases) derive from a survey of members of the Realignment Committee. The case weights include the amount of time required to attend to preliminary matters, conduct final hearings, and consider enforcement actions.

The case type that requires the greatest amount of time is child abuse and neglect, at 585 minutes. Other case types that require a significant amount of time are general civil (175 minutes), felonies (166 minutes), and misdemeanors (127 minutes).

Exhibit 9: 2006 Case Weights

Case Type	Case Weight (average minutes)
Felony*	166.0
Misdemeanor*	126.8
Criminal appeals from magistrate court*	72.8
Delinquency*	97.7
Child abuse and neglect*	585.0
General civil*	174.6
Other civil*	55.0
Family protective order	45.0
Family protective appeals from family court	64.3
Other appeals from family court	95.8
Original jurisdiction cases from family court	60.2
Overlap cases	46.5

\* Case weights were established in the 1998 time study.

The final case weights for the 5 new case types were calculated by taking into account the frequency of events that occur within each case type. Exhibit 10 shows how each of the new weights were calculated. The “event time” derives from a survey of Realignment Committee members; the average excludes the highest and lowest estimates. The event frequency is an estimate based on judicial experience.

**Exhibit 10: Inside the Numbers: Calculating Case Weights**

	Event Time (in minutes)		Event Frequency (% of cases)	=	Contribution to Workload Standard
<b>Family Protective Orders</b>					
Preliminary Matters	19	x	100%	=	19.0
Final Hearings	48.5	x	50%	=	24.3
Enforcement Actions	34	x	5%	=	1.7
			Final Workload Standard		<b>45.0</b>
<b>Family Protective Appeals from Family Court</b>					
Preliminary Matters	23.5	x	100%	=	23.5
Final Hearings	52.5	x	75%	=	39.4
Enforcement Actions	27.5	x	5%	=	1.4
			Final Workload Standard		<b>64.3</b>
<b>Other Appeals from Family Court</b>					
Preliminary Matters	43	x	100%	=	43.0
Final Hearings	66	x	80%	=	52.8
			Final Workload Standard		<b>95.8</b>
<b>Original Jurisdiction Cases from Family Court</b>					
Preliminary Matters	23	x	100%	=	23.0
Final Hearings	46.5	x	80%	=	37.2
			Final Workload Standard		<b>60.2</b>
<b>Overlap Cases</b>					
Preliminary Matters	21.5	x	100%	=	21.5
Final Hearings	38.5	x	50%	=	19.3
Enforcement Actions	23	x	25%	=	5.8
			Final Workload Standard		<b>46.5</b>

**Case Filings**

The number of cases filed by case type for each circuit for the most recent year is the second element needed to build a model of judge need. The West Virginia AOC provided 2005 filings for the following cases: felony, misdemeanor, criminal appeals, delinquency, child abuse/neglect, general civil, and other civil. Data for the remaining case types (family protective orders, family protective appeals from family court, other appeals from family court, original jurisdiction cases from family court, and overlap cases) were collected over an 8-week period and verified by the circuit court judges for accuracy. These figures were then extrapolated to an annual basis.

In addition, a change in the counting of child abuse and neglect cases between 1997 and 2005 required a modification of the filing figures.

To reflect previous standards that counted the family unit as a single case (rather than current practices of counting each child as a separate case), the research team modified 2005 case filings using data provided by the U. S. Bureau of the Census. In this case, the 2005 filings for abuse and neglect cases (n=2,278 cases) were artificially lowered to 1,332 cases (the average number of children per family with children in West Virginia is 1.71).

With the creation of the Family Court system in West Virginia and statute revisions, there has been a change in the number of cases handled by the Circuit Court from the time of the first study in 1998 to the current assessment. Exhibit 11 shows the number of case filings for 1997 and 2005.

**Exhibit 11: Case Filings, 1997 and 2005**

Case Type	Total Filings		Difference	Percent Change
	1997	2005		
Felony	4,819	6,274	1,455	30%
Misdemeanor	878	716	-162	-18%
Criminal Appeals	2,264	397	-1,867	-82%
Delinquency	6,144	5,411	-733	-12%
Child Abuse/Neglect	801	1,332 *	531	66%
General Civil	16,382	18,239	1,857	11%
Other Civil	4,867	6,873	2,006	41%
Review of Family Law Master Recommended Decisions and Orders	21,410	--	-21,410	--
Family Protective Orders	--	566	566	--
FPO Appeals	--	374	374	--
Other Appeals from Family Court	--	963	963	--
Original Jurisdiction from Family Court	--	19	19	--
Overlap Cases	--	842	842	--
<b>Total</b>	<b>57,565</b>	<b>42,005</b>	<b>-15,560</b>	<b>-27%</b>

\* Case filings for child abuse and neglect cases for 2005 were adjusted to make them comparable to 1997 counting standards. The actual number of abuse and neglect cases in 2006 was 2, 278.

- The creation of the Family Court in West Virginia and legislative changes resulted in a significant drop in filings between 1997 and 2005.
- There has been an increase in filings that require careful judicial deliberation. The cases with the highest weights, and hence the more complex, have risen dramatically. Even after adjustments for counting standards, child abuse and neglect cases increased by 66%, general civil filings increased by 11%, and felony cases increased by 30%.
- An examination of the seven case types that were common in both 1997 and 2005 actually show an increase in filings, from 38,152 to 41,247—an increase of 8.2%

**Judge Year**

Judge year is the third element required to determine judge need. Judge year is the total amount of judicial time available each year per judge. This value was determined in the 1998 study as follows:

**Calculation of Judge Year**

- ◆ Available judge days reflects the number of days available to each judge per year to hear case-related matters. This figure is 209 days, which assumes 13 holidays, 15 vacation days, 10 sick days, 10 education days, and 4 days spent on other meetings or conferences.
- ◆ A judge day consists of 6.5 hours devoted to case-related activity, and 1.5 hours spent on non-case related matters (including travel).
- ◆ The judge year = 209 days x 6.5 case-related hours per day, or 1,359 hours per year that a judge can spend directly on the disposition of cases.

The 1998 study used the same judge year for each judge in each circuit. The Realignment Committee asked the research team to re-examine the impact of travel for those judges who serve multiple counties and must regularly travel between courthouses. The West Virginia AOC provided the source of data: travel vouchers from 2005. The vouchers recorded miles and were used to identify those circuits that required excessive travel.

The documentation of excess travel time resulted in three circuit tiers. Low-travel circuits typically averaged fewer than 15 minutes per judge per day in travel (20 circuits). Five circuits were identified as medium-travel circuits, with travel times ranging from 15 to 30 minutes per judge per day (circuits 2, 11, 19, 21, 26). Six

circuits were high-travel circuits where travel times exceeded, on average, more than 30 minutes per judge per day (circuits 1, 3, 5, 14, 22, 31). The judge day for 2006 was modified to take into account excessive travel. Details are found below:

Travel Tier	Judge Day	No. of Circuits
Low Travel (less than 15 minutes)	6.5 hours	20
Medium Travel (15 to 30 minutes)	6.25 hours	5
High Travel (more than 30 minutes)	6.0 hours	6

### ***Number of Judges***

The final element in the determination of judge need is the number of judges by circuit. Exhibit 12 shows the number of judges by circuit for 1998 and 2006. In 1998 there were 62 circuit court judges. Eight years later, that figure increased to 66, with two judges added to circuit 23, and one judge added in circuits 5 and 15.

**Exhibit 12: Number of Judges, 1998 and 2006**

Judicial Circuit	1998	2006	Difference
1	4	4	--
2	2	2	--
3	1	1	--
4	3	3	--
5	1	2	1
6	4	4	--
7	2	2	--
8	2	2	--
9	2	2	--
10	3	3	--
11	2	2	--
12	2	2	--
13	7	7	--
14	2	2	--
15	2	3	1
16	2	2	--
17	2	2	--
18	1	1	--
19	1	1	--
20	1	1	--
21	2	2	--
22	1	1	--
23	3	5	2
24	1	1	--
25	2	2	--
26	1	1	--
27	1	1	--
28	1	1	--
29	2	2	--
30	1	1	--
31	1	1	--
<b>Overall</b>	<b>62</b>	<b>66</b>	<b>4</b>

**Judge Need**

Judge need is calculated using case weights, case filings, judge year, and the current number of judges. Exhibit 13 shows the calculation of judge need for the state of West Virginia. The

data indicate that 77.5 judges are needed to handle the current caseload. Note that this figure is based on current practices and does not reflect standards that would improve practices. This figure represents a need of 11.5 judges for the West Virginia Circuit Court.

**Exhibit 13: Statewide Results for Judge Need**

Case Type	Total Filings		Case Weight		Workload
Felony	6,274	x	166.0	=	1,041,484
Misdemeanor	716	x	126.8	=	90,789
Criminal Appeals	397	x	72.8	=	28,902
Delinquency	5,411	x	97.7	=	528,655
Child Abuse/Neglect	1,332	x	585.0	=	779,316
General Civil	18,239	x	174.6	=	3,184,529
Other Civil	6,873	x	55.0	=	378,015
Family Protective Orders	566	x	45.0	=	25,427
FPO Appeals	374	x	64.3	=	24,008
Other Appeals from Family Court	963	x	95.8	=	92,223
Original Jurisdiction from Family Court	19	x	60.2	=	1,144
Overlap Cases	842	x	46.5	=	39,168
Total	42,005				6,213,660
Average Judge Year Value				÷	80,145
Implied Need				=	<b>77.53</b>
Current Number of Judges				-	<b>66</b>
Difference				=	<b>11.53</b>

Judge need was also calculated by circuit to identify areas of greatest needs. Exhibit 14 details judge need by circuit without considering the current judge positions. According to this information, circuits that are in need of at least one additional judge include:

- Circuit 13 (judge need = 2.7 judges),
- Circuit 23 (judge need = 1.7 judges),
- Circuit 9 (judge need = 1.5 judges), and
- Circuit 24 (judge need = 1.1 judge).

**Exhibit 14: Total Judicial Need**

<b>Judicial Circuit</b>	<b>2006 Judges</b>	<b>Judge Need</b>	<b>Difference</b>
1	4	4.75	+ 0.75
2	2	2.13	+ 0.13
3	1	0.97	- 0.03
4	3	3.03	+ 0.03
5	2	2.72	+ 0.72
6	4	4.75	+ 0.75
7	2	1.91	- 0.09
8	2	1.47	- 0.53
9	2	3.53	+ 1.53
10	3	3.91	+ 0.91
11	2	2.01	+ 0.01
12	2	1.69	- 0.31
13	7	9.74	+ 2.74
14	2	1.81	- 0.19
15	3	2.52	- 0.48
16	2	1.95	- 0.05
17	2	2.45	+ 0.45
18	1	0.94	- 0.06
19	1	1.30	+ 0.30
20	1	1.24	+ 0.24
21	2	1.54	- 0.46
22	1	1.64	+ 0.64
23	5	6.68	+ 1.68
24	1	2.09	+ 1.09
25	2	2.43	+ 0.43
26	1	1.33	+ 0.33
27	1	1.30	+ 0.30
28	1	1.10	+ 0.10
29	2	1.84	- 0.16
30	1	1.88	+ 0.88
31	1	0.87	- 0.13
<b>Overall</b>	<b>66</b>	<b>77.53</b>	<b>+ 11.53</b>

Another approach to presenting the data is to use a concept known as judge need ratio, which is calculated by dividing the implied judge need by the actual number of judges. The ratio provides a representation of the average workload by judge. For instance, if judge need is 2, but there is currently only 1 judge serving in

the circuit, we can estimate that the judge is currently performing the function of two judgeships. Exhibit 15 shows judge need ratio by circuit for 1998 and 2006. Of particular interest is the persistent high judge need ratio in circuits 24 and 30, which ranked first and second in judge need ratio for both years.

**Exhibit 15: Circuit Court Rankings by Judge Need Ratio (implied need/actual # judges)**

<b>Circuit</b>	<b>2006 Rank</b>	<b>Judge Need Ratio</b>	<b>1998 Rank</b>	<b>Judge Need Ratio</b>
24	1	2.09	2	1.66
30	2	1.88	1	1.97
9	3	1.77	7	1.34
22	4	1.64	12	1.13
13	5	1.39	3	1.57
5	6	1.36	4	1.48
23	7	1.34	5	1.39
26	8	1.33	11	1.16
10	9	1.30	6	1.36
19	10	1.30	13	1.12
27	11	1.30	16	0.96
20	12	1.24	15	1.05
17	13	1.23	10	1.18
25	14	1.22	20	0.91
1	15	1.19	18	0.95
6	16	1.19	9	1.31
28	17	1.10	25	0.81
2	18	1.07	17	0.95
4	19	1.01	24	0.81
11	20	1.01	26	0.76
16	21	0.98	19	0.94
3	22	0.97	31	0.59
7	23	0.96	22	0.85
18	24	0.94	21	0.88
29	25	0.92	14	1.07
14	26	0.91	28	0.71
31	27	0.87	23	0.82
12	28	0.85	27	0.76
15	29	0.84	8	1.32
21	30	0.77	30	0.67
8	31	0.74	29	0.71

Note: Judge Need Ratio = Implied Need / Actual # Judges

### ***Conclusions***

The 2006 workload assessment was based on a number of estimates. While a time study would have resulted in the development of more accurate and reliable statistics, the methods employed provide sound and defensible figures. Clearly, there is an overwhelming need for judges in the West Virginia Circuit Courts. Moreover, the standards used in this study reflect current practices. Had the Realignment Committee adjusted workload standards to reflect ideal practices or findings from the adequacy of time survey, the judge need would have been much greater. Finally, the data exclude mass litigation cases, which are currently heard by a panel of 6 judges. In conclusion, there is evidence to indicate a great need for additional Circuit Court judgeships in West Virginia.

# Chapter 4: Future Considerations

## *Keeping the Case Weights Current*

The 2006 workload assessment was based on case weights developed in 1998 and estimates for newer case types. Changes in laws and the creation of the Family Court system in West Virginia have impacted the work of the Circuit Court. Over time, the 1998 case weight standards and the case weights estimated for the additional 2006 case types need to reflect changes in laws and practices. A time study should be carried out in the future to create standards that are current and relevant.

Periodic updating is necessary to ensure that the standards continue to represent judicial workload accurately. Three recommendations are made below that identify a course of action to be taken by the Realignment Committee to maintain the integrity of the workload standards through ongoing and structured oversight as well as appropriate case auditing practices.

Over time, the integrity of case weights are affected by multiple influences, including changes in legislation, court rules, legal practice, technology and administrative factors. Examples of such factors include legislative mandates that increase the number of required hearings (e.g., additional review hearings in dependency cases), the development of specialized courts (e.g., drug courts), and the introduction of more efficient case management practices. In addition, of critical importance to the effective use of case weights is complete and accurate case filing and disposition data collected in comparable fashion from all 31 West Virginia circuits. West Virginia should develop a procedure to review and update the workload standards and data collection system periodically so as to preserve the validity of the proposed judicial needs assessment process.

The West Virginia AOC has primary responsibility for maintaining the judicial needs model and should make sufficient staff resources available to keep up-to-date on factors (such as those discussed above) that may affect the accuracy of the standards. For

the workload standards to be reliable and accurate over time, the NCSC recommends the following:

### **Recommendation 1:**

*Annual review of factors impacting the case weights for specific types of cases. We recommend that the Realignment Committee meet on an annual basis to review the impact of new legislation or other contextual factors on the judicial case weights. This review process will serve to identify areas in which specific research may be needed to quantify the impact of new laws, policy, or court procedures on the weights for specific types of cases. Because this process will target for review only those standards where there is evidence of recent change, it will be more cost effective than updating the entire set of workload standards.*

An annual review of this kind will require AOC research staff commitment to gathering and analyzing relevant data and estimating the likely impact of change within state's justice system. There should be no reason to redo the study or to undertake a complete, statewide sampling of time-study data on an annual basis. Instead, efforts should be made to identify only those case types for which time data may have changed significantly from the initial study results. Relatively small-scale samples then can be taken to assess whether any adjustments to selected workload standards are warranted.

However, over time, there will be sufficient changes in legislation, case processing, court structure, and/or jurisdiction to justify a complete study.

**Recommendation 2:**

*The AOC should plan to conduct a systematic update of the workload standards prior to realignment considerations, approximately every eight years, depending on the judgment of the Realignment Committee. Funding for this should be part of the regular legislative agenda related to the process of assessing the need for new judgeships.*

Integrity of the workload standards depends also on maintaining the quality of record keeping and statistical reporting.

**Recommendation 3:**

*The AOC should institute a process to conduct county-level audits of the data collected and reported that are the source for West Virginia's case statistics. A multi-year audit scheme could be developed.*

Regular and thorough auditing and feedback for correcting data collection problems is critical for achieving reliability in reporting across the courts.