

Recommendations for Using Weighted Caseload Models in the Pandemic

A Resource From CCJ-COSCA

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The National Center for State Courts developed the following recommendations using a multi-prong approach. Data was collected via a nationwide survey that was sent to all U.S. states and territories regarding the use of weighted caseload models during the pandemic to estimate the need for judicial officers, court staff, and probation officers. Survey topics included a description of their use of weighted caseload models or other workload assessment methods, state reporting requirements for resource allocation, current adjustments or workarounds in use, and considerations for impending backlog.

Survey administration was followed by focus group discussions with state court leaders that use weighted caseload models. NCSC staff presented survey results and preliminary recommendations for discussion. Discussions focused on comprehension and appeal of the recommendations to a broader audience, practical applications, guidance needed to put the recommendations into action, and any unanswered questions.

Overall, the proposed recommendations were supported by focus group participants. Through many rich discussions, suggestions were offered to strengthen the recommendations even further.

Filings/Counts Used to Determine Resource Need

The pandemic has severely affected case filing and disposition patterns in many states. Filings and dispositions were significantly lower for all or part of the period after March 2020. Of primary concern for courts were the reduced number of jury trials and growing case backlogs.

Applying case weights to recent filing counts to determine current resource need may dramatically understate existing resources in states. The following recommendation addresses how to account for 2020-2021 caseloads in state models, estimating backlog, and proactively allocating resources.

1. NCSC recommends that states should not use 2020 filing data when assessing workload needs using existing models.

NCSC recommends courts should use a 3-year average of case filings (excluding 2020) when assessing workload needs using existing models. Including 2021 filings should be considered with caution, as they may still reflect trends from the pandemic.

Because case filings were significantly lower in 2020 than in 2019, an important question—particularly in the area of civil and domestic relations—is whether the cases that were not filed in 2020 will be filed in 2021 or 2022. These cases are referred to as “shadow” cases and have the potential to overwhelm courts that were already struggling to keep up with caseloads prior to 2020. See:

https://www.courtstatistics.org/data/assets/pdf_file/0022/61519/2020_4Q_pandemic.pdf

Growing backlogs led to the NCSC developing a Backlog Simulator tool. The purpose of this tool is to provide a path for your court to assess your active pending caseload, identify backlogs, brainstorm possible solutions, and make policy and practice changes to improve case processing. For more information, please contact: bostrom@ncsc.org

Case Weights

The following recommendations provide suggestions for evaluating the impact of remote and hybrid practices on established case weights developed when court practices were largely in-person.

Recent studies conducted by the NCSC show that remote hearings take somewhat longer than similar hearings conducted in-person. Ongoing issues with the use of remote hearing technology is the primary reason cited; secondarily, preliminary data suggests fewer cases end up in default judgments (FTAs are lower) as more people attend remote hearings, which can extend the time a hearing takes, but also may increase the number of hearings held.

Survey respondents indicated that remote v. in-person hearing practices are still in flux in many states. Around the country, policies are currently under development to guide and govern the circumstances for when remote or in-person will be the default hearing practice.

2. **NCSC recommends the use of qualitative sessions such as Delphi or focus groups to perform interim adjustments to the case weight, for a select number of case types that have been identified as showing the most need.**

NCSC recommends that existing workload values be used as a starting point to estimate the resources needed to address case backlog. Adjustments to case weights can be made without developing a new model. Qualitative adjustments allow for targeted changes to case weights by using panels of focus groups to discuss how certain procedures or laws have impacted workload. Adjusted case weights can be used in the interim until a new weighted caseload model is developed.

3. **NCSC recommends a new weighted caseload study to adjust all case weights after state judicial leaders determine there is sufficient understanding and agreement that the current mix of remote/hybrid/in-person case processing procedures will be maintained going forward and when it is believed that court filings are back to “normal.”**

NCSC recommends that each state establish statewide protocols on conducting virtual hearings, provide consistent training and equipment, create resources for video platforms etiquette, plain language materials to better inform court users of the process, simplified instructions, and gathering of feedback from court users. States should consider providing this information in various formats, including written, video, and direct calls to court users prior to the court hearing.

4. **NCSC recommends that a new weighted caseload study capture and distinguish work being performed in both in-person and remote environments. Documenting the volume of cases and associated time spent working within each distinct situation will allow future workload models to accurately assess workload demands in the evolving world of case processing practices.**

This recommendation is future directed, as gathering data documenting whether hearings are held in-person or remotely will require modifications to existing case management systems.

NCSC recommends the consideration of a new position such as a “Technology Bailiff” to reduce the amount of time required by judges or court staff taken to resolve technology issue in remote proceedings. This new position can be used to contact parties prior to the hearing to ensure they understand what will happen and provide an opportunity to have questions answered, and to help people join the session, navigate the remote technology, ensure an appropriate background, etc.

New Data Requirements

The rapid emergence and acceptance of remote and hybrid case processing practices has permanently changed the landscape of case processing. To understand the full impact of these changes on the workload of judges, court staff, probation officers, and partner agencies will require the collection of more specific case level data. The following recommendations address how to include new procedures, such as remote or hybrid hearings, in interim adjustments to case weights or a full model update.

5. NCSC recommends consistent data tracking for remote, hybrid, and in-person procedures. This will require integration of potentially new data fields into current case management systems.

Workload models largely use case filing counts as the primary driver. Most states are able to accurately track the number of filings and dispositions by court level and location. Some weighted caseload models integrate additional factors related to workload (e.g., rate of interpreter usage, proportion of self-represented litigants) to more fully distinguish variation in workload among jurisdictions. The ability to incorporate such additional information is conditional on it being consistently tracked in the case management system.

Whether hearings are heard remotely or in-person may emerge as a new factor to be considered when developing workload models. If so, it will be necessary to distinguish and count the number of hearings/cases heard in each environment (or at least be able to estimate).

6. NCSC recommends a backlog appraisal as part of your regular performance assessment that may include clearance rates, age of pending caseloads and time to disposition.

CourTools (<https://www.courtools.org/>) provides a set of case management performance measures that allow for comparisons between this year and last. In addition, it is important to focus on the future to tell whether the decisions you are making now are going to help you in the coming months. The Backlog Simulator Tool is designed to provide a forecast of the future trend in pending (and backlogged) cases based on interventions your court makes today.

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