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November 12, 2015

The Honorable Walter A. Stosch, Co-Chairman
Senate Finance Committee
Innsbrook Centre
4551 Cox Road, Suite 110
Glen Allen, Virginia 23060-6740

The Honorable Charles J. Colgan, Co-Chairman
Senate Finance Committee
10660 Aviation Lane
Manassas, Virginia 20110-2701

The Honorable S. Chris Jones, Chairman
House Appropriations Committee
P.O. Box 5059
Suffolk, VA 23435

Dear Chairmen Stosch, Colgan, and Jones:

Chapters 812 and 822, Virginia Acts of Assembly, 2014 Session, directed the Supreme Court of Virginia to gather empirical data on the reliance of interpreters as a related to the implementation of the Virginia Judicial Workload Assessment Report (dated November 15, 2013), and in order to assess more accurately the added weight to be given in cases requiring the use of interpreters in Circuit, General District and Juvenile and Domestic Relations Courts in the Commonwealth.

In response to the legislation, the Supreme Court of Virginia's Office of the Executive Secretary contracted with the National Center for State Courts to gather empirical data and assess the impact of the use of interpreters on judicial workload and judicial need in the Commonwealth.

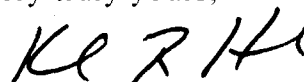
On behalf of the Court, I am submitting the *Virginia Court Interpreter Study: Impact of Interpreter Activity on Judicial Workload*, completed by the National Center for State Courts, which details the use of interpreters in the courts and includes recommendations regarding the added weight to be given in cases requiring the use of interpreters in analyzing judicial workload.

Letter to Chairmen Stosch, Colgan, and Jones
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November 12, 2015
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If you have any questions regarding this report, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "K R Hade". The letters are stylized and cursive.

Karl R. Hade

KRH:jrp

Virginia Court Interpreter Study: Impact of Interpreter Activity on Judicial Workload

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Research Division
National Center for State Courts
October 2015



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Overview

That in order to follow up on the implementation of the Virginia Judicial Workload Assessment Report, dated November 15, 2013, by the National Center for State Courts and in order to assess more accurately the added weight to be given in cases requiring the use of interpreters in Circuit, General District and Juvenile and Domestic Relations Courts in the Commonwealth, the Virginia Supreme Court shall gather empirical data on the reliance of interpreters and make recommendations to the Chairmen of the House Appropriations and Senate Finance Committees (Chapters 812 and 822 of the 2014 Virginia Acts of Assembly).

Goal

Assess the impact of the use of interpreters on judicial workload and judicial need in the Commonwealth of Virginia. Virginia has three statutes that address the provision of court interpreters in court proceedings. Virginia Code §19.2-164 provides access to interpreters in all criminal cases,¹ while appointment is optional in civil cases.² However, we are advised that in practice, courts provide interpreters in both criminal and civil proceedings, and that the cost of an interpreter for an individual who is “limited English proficient” or LEP, including juveniles and LEP family members of a juvenile, is not charged against the LEP individual(s).³ Interpreters are also provided, pursuant to Va. Code § 37.2-802, in cases involving involuntary admission, or judicial certification of eligibility for admission, to a treatment facility.

Method

Undertake a two-step process to (a) understand differences in the amount of judicial time spent handling cases that involve interpreters, as compared to cases without; (b) estimate the proportion of cases (filings) in different court levels and jurisdictions that involve interpreters; and (c) calculate the number of judges (FTE) needed to handle the judicial workload

(including cases with interpreters) in the circuit, general district, and juvenile and domestic relations district courts in the Commonwealth of Virginia.

Step 1: Conduct a series of interviews with judges, clerks, and OES staff interpreters at circuit, general district, and juvenile and domestic relations district courts in four judicial circuits and districts.

Step 2: Conduct a month-long time study during which judges track and record the number of hearings held as well as the amount of time spent on hearings, with and without an interpreter. Judges from a targeted sample of 21 jurisdictions with a higher level of interpreter usage in circuit, general district, and juvenile and domestic relations district court were selected to participate.

Findings

1. Hearings involving interpreters take longer than hearings that do not involve an interpreter. In courts with the highest level of interpreter usage, hearings with an interpreter take, on average, 2.2 times as long as those without in circuit court, 2.6 times as long in general district court, and

¹ Va. Code § 19.2-164 (2007).

² “In any trial, hearing or other proceeding before a judge in a civil case in which a non-English-speaking person is a party or witness, an interpreter for the non-English-speaking person may be appointed by the court.” Va. Code § 8.01-384.1:1 (2003).

³ Consistent with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) and applicable Federal funding statutes such as the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. §3789d(c)), and their implementing regulations.

- 1.3 times as long in juvenile and domestic relations district court;
2. The rate of interpreter use varies among the different court levels and different jurisdictions;
3. The use of interpreters impacts judicial need in jurisdictions with a significant proportion of cases involving interpreters. Overall, time study results and input gathered during the site visits lead National Center for State Courts (NCSC) staff to believe no new judgeships are needed statewide due to high levels of interpreter activity. Excess workload in certain jurisdictions may be handled through access to retired judges and substitute judges.

Background

In 2013, the NCSC completed a study of judicial workload and judicial boundary realignment in the Commonwealth of Virginia.⁴ The study developed a valid measure of judicial workload in all circuit and district courts, taking into account variations in complexity among different case types. The study concluded that “the weighted caseload model clearly demonstrates that the number of judges currently sitting at each of Virginia’s three trial court types is inadequate to handle the total workload of the courts. The General Assembly should consider filling judicial vacancies, and in some cases creating new judicial positions, in circuits and districts where the weighted caseload shows a need for additional judgeships.”⁵ During the 2014 legislative session, the Virginia General Assembly approved a net gain of 13 new circuit court judgeships and a net gain of 17 new juvenile and domestic relations district court judgeships.

During the development of the 2013 study, members of the Judicial Needs Assessment Committee (JNAC) and other key stakeholders expressed a strong desire to quantify and account for additional judicial resources needed to handle cases involving interpreters. It was argued that hearings involving interpreters take longer, and thus more judicial time, than similar hearings without an interpreter and that the rate at which interpreter services are utilized varies between the circuits and districts. In theory, jurisdictions with higher proportions of cases involving interpreters would require additional judicial resources to handle the additional work.

It should be noted that the case weights developed during the 2013 judicial workload study incorporate a baseline level of time that reflects the additional time spent by judges handling cases involving interpreters. That is, by design, the case weights show the average amount of time spent by judges statewide handling all types of cases and so will include the average statewide amount of additional time associated with interpreter cases. A question that arose during the study is whether variations in the level of interpreter activity around the state may result in the under-reporting of judicial need in areas where interpreter activity is high. For this reason, the focus of the study is on jurisdictions where there is an above average level of cases involving interpreters. For jurisdictions with an average amount (or below average amount) of interpreter activity, the existing case weights will continue to serve as valid measures of judicial workload.

To accurately measure the additional judicial work associated with court interpretation requires reliable and valid counts of the number of cases (filings) involving interpreters and those not involving interpreters in each of the circuits and districts. Although the statewide case management systems developed and maintained

⁴ National Center for State Courts. "Virginia Judicial Workload Assessment Report." *Office of the Executive*

Secretary. Supreme Court of Virginia, 15 Nov. 2013. Web. 22 Oct. 2015.

⁵ *Ibid*, p.44.

by the Office of the Executive Secretary (OES) can capture the need for language access services in a case, it does not allow for differentiation of the time spent on cases by type, both with and without interpreter involvement. Due to this limitation, JNAC decided that the 2013 study would not quantify and compare judicial workload in cases with and without interpreter involvement.

An enactment clause included in the 2014 legislation⁶ required further study on the use of interpreters and the impact on case weights. This legislation adjusted the number of circuit, general district, and juvenile and domestic relations district court judges authorized in accordance with recommendations made by the NCSC in the *Virginia Judicial Workload Assessment Report*, dated November 15, 2013. Subsequently, the OES contracted with the NCSC to conduct a study designed to estimate the additional judicial workload (and judge need) associated with cases involving interpreters in courts with the highest interpreter usage. The new study relies on extensive input and data collected from *site visits* to circuit and district courts and a targeted *time study* during which judges tracked and recorded the number and the amount of time spent on hearings with and without an interpreter.

Site Visits

NCSC project staff conducted a series of site visits with judges, clerks, and OES staff interpreters at circuit, general district, and juvenile and domestic relations district courts in four jurisdictions (Chesterfield, Fairfax, Harrisonburg, and Virginia Beach). At each site, project staff documented the types of interpreter services used (e.g., OES staff interpreter, in-person vendor, over-the-phone vendor), the perceived pros and cons of the different types of interpreter services, the primary languages for which interpretation is

provided, the modes of interpretation services (e.g., simultaneous versus consecutive), and existing scheduling practices for interpreters in court hearings. Additionally, judges were asked to estimate the frequency with which they utilize interpreter services and to estimate the impact an interpreter has on the duration of a typical hearing as compared to a similar hearing without an interpreter. Four major themes emerged from the site visits.

1) Hearings that involve an interpreter take longer than similar hearings without an interpreter.

Judges estimated that hearings with an interpreter take 1.5 to 2 times as long as similar hearings without an interpreter. While the legal and substantive issues would be similar, procedural aspects would differ. For example, hearings involving both the consecutive and simultaneous modes of interpretation require additional time for the interpretation itself. In the former, the interpreter must finish interpreting before the next person speaks. In the latter, a normal lag time (decalage) is necessary for an interpreter to understand enough of the utterance prior to rendering into the target language. Additional time is also often needed to set up interpretation equipment (if used), to wait for an interpreter to become available or to arrive, to instruct and explain to the interpreter what is expected if not certified, and to ask LEP individuals to speak slowly and wait for the interpreter to finish interpreting before speaking again.

2) The demand for interpreter services varies by court level and by jurisdiction

Circuit and general district court judges in Fairfax County estimated that interpreters are used in roughly 10 percent of cases, while juvenile and domestic relations district court judges within the same jurisdiction said their

⁶ Chapters 812 and 822 of the 2014 Virginia Acts of Assembly

interpreter cases were closer to 25 percent. In contrast, circuit and district court judges in Virginia Beach indicated a lower level of hearings involving an interpreter. An examination of data from the American Community Survey (2009-2013) supports this finding. For example, in Fairfax County 14.6 percent of individuals age five and older speak English less than very well, as compared to 3.5 percent in Virginia Beach, 4.2 percent in Chesterfield County, and 3.1 percent in Rockingham County. In addition, the types of languages spoken vary by jurisdiction. For example, the top five non-English languages or groups of languages (2009-2013) spoken in Fairfax County by individuals who speak English less than very well are Spanish, Korean, Vietnamese, Chinese, and African Languages. In Virginia Beach the top five are Spanish, Tagalog, Vietnamese, Chinese, and Korean while Spanish, Russian, other Slavic languages, Italian, and other Indo-European Languages are the top five in Rockingham. In Chesterfield, the top five are Spanish, Vietnamese, Korean, Chinese, and Mon-Khmer, Cambodian⁷

3) *The type of language spoken and the type of interpreter service can have a direct impact on the duration of the hearing and the quality of interpretation.*

At the time of interview, judges stated during site visits that OES staff interpreters were available exclusively for Spanish interpretation.⁸ OES staff interpreters are familiar with courtroom procedures and existing technologies, and their experience allows them to provide more efficient interpretation as compared to other types of interpreter services used. Interpretation for other languages can be less efficient. Several judges noted their concern about the variable quality and competency of in-person vendor interpreters, many of whom are

not certified.⁹ In addition, the use of over-the-phone interpreter services is widely viewed as less efficient and less effective. Typically, the court is forced to wait for the agency to connect an interpreter and, when a connection is made, it can be difficult to hear and unreliable, as characterized by dropped calls.

4) *Several courts have developed policies, practices, and procedures that improve the efficient use of interpreters.*

Necessity drives courts with high levels of interpreter activity to improve the efficiency of how interpreters are used. A strong perception in all courts visited is that there are currently insufficient interpreter resources to meet a steady and growing demand. Judges and clerks cite the need to be creative in making the best use of a scarce and costly resource. One strategy is to determine as early in the life of the case as possible (e.g., initial filing) that an interpreter will be needed so that the court can schedule an interpreter in advance. However, obtaining advance notice often proves problematic as many LEP individuals needing an interpreter arrive in court without prior notification. In some instances, particularly for non-Spanish speakers with more complex cases, this can result in the case being continued until an in-person interpreter can be secured.

In an effort to reduce the number of cases continued when the need for an interpreter in the courtroom arises without advance notice as well as to prevent dockets from coming to a standstill, some courts use a pager or instant message system to “page” OES staff interpreters to indicate where they are needed. If an interpreter is not immediately available, rather than continue the case, some judges will “set aside” the interpreter cases until one becomes available. The judge will then call all the cases

⁷ Selected Characteristics of the Native and Foreign-born Populations, 2009-2013 American Community Survey 5-year Estimates, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_S0501

⁸ OES staff interpreters are currently also available in the Korean and Vietnamese languages.

⁹ Certification is available in the Arabic, Korean, Mandarin, Russian, Spanish, and Vietnamese languages.

involving an interpreter as soon as the interpreter is available. While this is an efficient way to make the best use of interpreter time, some judges worried about the appearance that these cases were being singled out for special or atypical treatment.

Fairfax uses technology in the courtroom to improve the effectiveness of the interpretation. The Fairfax County IT department developed a system which uses headsets where the interpreter can use a toggle switch to speak directly to the litigant and then flip a switch to broadcast the litigant's reply to the court. For Spanish language OES staff interpreters, this system allows for more efficient interpretation in many hearings. In Virginia Beach, the OES staff interpreter has coordinated remote interpretation services to other courts over video.

To augment available interpreter resources, the Fairfax Juvenile and Domestic Relations District Court has developed a Volunteer Interpreter Program (VIP). Created in 1994, the VIP offers Spanish interpretation primarily for intake and brief status hearings in the juvenile and domestic relations district court. Currently, VIP volunteers do not provide interpretation for attorneys, general district court, or the circuit court. Interpretation is scheduled by appointment or is available for walk-ins, and can be on-site or off-site.

Time Study

A month-long targeted judicial time study began in June 2015 to allow for the empirical estimation of the proportion of cases (filings) that involve interpreter services and to assess any differences in the amount of judge time spent on cases with and without an interpreter. Circuit court, general district court, and juvenile and domestic relations district court judges from 21 jurisdictions, representing over 85% of reported interpreter activity within the Commonwealth of Virginia, were selected to participate (Exhibit 1). Since the focus of the current study was on understanding the impact of a relatively high level of interpreter services on judicial workload, jurisdictions with an average or minimal use of interpreter services were not selected to participate. The 2013 case weights already incorporate an average level of interpreter activity and so non-participating jurisdictions are not negatively affected by being excluded from the analysis. Overall, 68 circuit court judges, 49 general district court judges, and 59 juvenile and domestic relations district court judges participated in the time study.¹⁰

¹⁰ The degree of participation in the time study was excellent by judges working in jurisdictions with relatively high levels of interpreter activity. Of the 191 expected participants, 68 of 72 circuit judges, 49 of 56 general district judges, and 59 of 63 juvenile and domestic relations

district judges participated in the month-long time study, for an overall participation rate of 92%. This high level of participation gives us strong confidence in the reliability and validity of the results.

Exhibit 1: Participating Circuit and District Courts

Circuit/ District	Circuit	General District	Juvenile and Domestic Relations District
2	Virginia Beach	Virginia Beach	Virginia Beach
4	Norfolk	Norfolk	Norfolk
7	Newport News		Newport News
12	Chesterfield	Chesterfield	Chesterfield
13		Richmond	Richmond
14	Henrico	Henrico	Henrico
15	Fredericksburg/ Hanover/ Spotsylvania/ Stafford	Fredericksburg/ Hanover/ Spotsylvania/ Stafford	Fredericksburg/ Hanover/ Spotsylvania/ Stafford
16	Albemarle/ Culpepper	Albemarle/ Culpepper	Albemarle/ Culpepper
17	Arlington	Arlington	Arlington
18	Alexandria	Alexandria	Alexandria
19	Fairfax	Fairfax	Fairfax
20	Fauquier/ Loudoun	Fauquier/ Loudoun	Fauquier/ Loudoun
23	Roanoke	Roanoke	Roanoke
26	Rockingham/ Winchester	Rockingham/ Winchester	Rockingham/ Winchester
31	Prince William	Prince William	Prince William

During the time study, judges were asked to record both the number and duration of hearings that involved an interpreter and those that did not. A summary of the time study results are displayed in Exhibit 2.

Participating judges in circuit court held 13,121 hearings taking 273,620 minutes (4,560 hours) of judge time. Of this, 329 hearings, or 2.5 percent, involved an interpreter. On average,

hearings with an interpreter took 2.2 times as long as hearings without an interpreter.¹¹ In general district court, 4.1 percent of hearings involved an interpreter and hearings with an interpreter took 2.6 times as long as hearings without. In juvenile and domestic relations district court, 7.6 percent of hearings involved an interpreter and these hearings took 1.3 times as long as hearings without an interpreter.

¹¹ During the time study, hearings without an interpreter took on average 20 minutes per hearing (258,665 minutes divided by 12,792 hearings), while hearings with an

interpreter took roughly 45 minutes per hearing (14,955 minutes divided by 329 hearings), or 2.2 times as long.

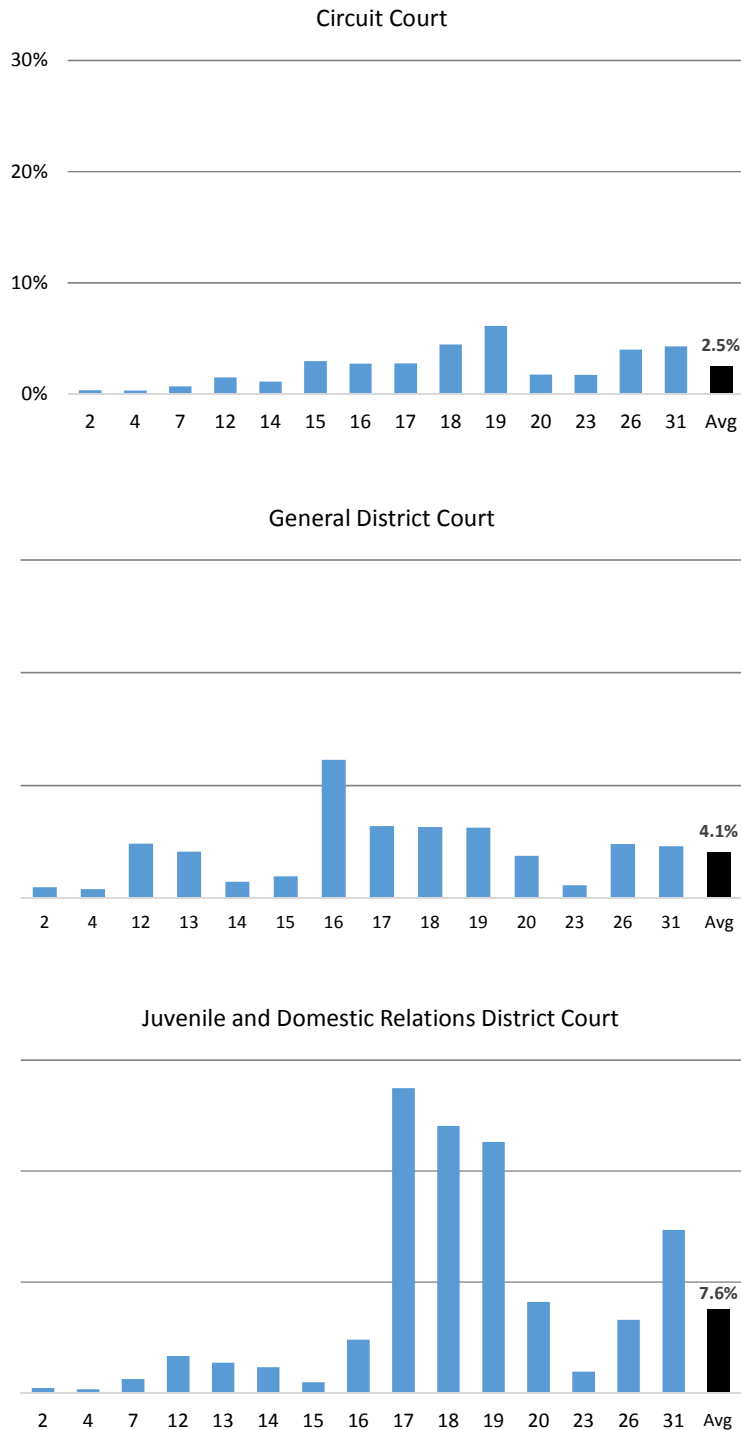
Exhibit 2: Time Study Results Summary

Circuit Court	Total Minutes	Total Hearings	Minutes without	Hearings without	Minutes with interpr	Hearings with interpr	Ratio of time	% Hearings w/ interpr
2	33,340	1,914	33,110	1,907	230	7	1.9	.4%
4	33,295	1,585	32,480	1,580	815	5	7.9	.3%
7	10,505	561	10,390	557	115	4	1.5	.7%
12	13,190	535	12,665	527	525	8	2.7	1.5%
14	21,695	813	21,515	804	180	9	0.7	1.1%
15	23,215	1,457	22,235	1,414	980	43	1.4	3.0%
16	12,155	441	11,960	429	195	12	0.6	2.7%
17	11,740	719	10,670	699	1,070	20	3.5	2.8%
18	6,615	403	6,235	385	380	18	1.3	4.5%
19	58,450	1,958	50,055	1,838	8,395	120	2.6	6.1%
20	18,500	1,023	17,960	1,005	540	18	1.7	1.8%
23	9,175	231	9,055	227	120	4	0.8	1.7%
26	10,475	923	9,680	886	795	37	2.0	4.0%
31	11,270	558	10,655	534	615	24	1.3	4.3%
Avg	273,620	13,121	258,665	12,792	14,955	329	2.2	2.5%

General								
District Court	Total Minutes	Total Hearings	Minutes without	Hearings without	Minutes with interpr	Hearings with interpr	Ratio of time	% hearings w/ interpr
2	18,090	4,384	17,470	4,341	620	43	3.6	1.0%
4	11,565	3,062	11,280	3,038	285	24	3.2	.8%
12	15,910	4,911	14,450	4,674	1,460	237	2.0	4.8%
13	7,060	1,676	6,565	1,607	495	69	1.8	4.1%
14	10,165	4,886	9,695	4,815	470	71	3.3	1.5%
15	16,250	8,058	15,530	7,902	720	156	2.3	1.9%
16	5,030	1,419	4,135	1,245	895	174	1.5	12.3%
17	9,815	3,455	8,350	3,234	1,465	221	2.6	6.4%
18	3,980	1,286	3,575	1,205	405	81	1.7	6.3%
19	29,595	16,009	24,120	15,008	5,475	1,001	3.4	6.3%
20	22,165	4,971	20,185	4,784	1,980	187	2.5	3.8%
23	9,790	3,710	9,395	3,668	395	42	3.7	1.1%
26	6,180	1,375	5,560	1,309	620	66	2.2	4.8%
31	24,230	11,425	20,410	10,897	3,820	528	3.9	4.6%
Avg	189,825	70,627	170,720	67,727	19,105	2,900	2.6	4.1%

JDR								
District Court	Total Minutes	Total Hearings	Minutes without	Hearings without	Minutes with interpr	Hearings with interpr	Ratio of time	% hearings w/ interpr
2	36,530	2,119	36,050	2,109	480	10	2.8	.5%
4	12,345	1,100	12,285	1,096	60	4	1.3	.4%
7	20,460	1,578	20,070	1,558	390	20	1.5	1.3%
12	20,025	1,253	18,960	1,211	1,065	42	1.6	3.4%
13	15,375	1,492	14,935	1,451	440	41	1.0	2.7%
14	26,665	1,928	25,780	1,883	885	45	1.4	2.3%
15	20,615	1,313	20,310	1,300	305	13	1.5	1.0%
16	6,270	311	5,860	296	410	15	1.4	4.8%
17	10,355	626	7,730	454	2,625	172	0.9	27.5%
18	10,450	544	7,200	413	3,250	131	1.4	24.1%
19	37,415	1,963	28,035	1,519	9,380	444	1.1	22.6%
20	16,550	1,094	14,550	1,004	2,000	90	1.5	8.2%
23	4,620	309	4,560	303	60	6	0.7	1.9%
26	12,140	757	11,355	707	785	50	1.0	6.6%
31	17,675	2,155	13,850	1,838	3,825	317	1.6	14.7%
Avg	267,490	18,542	241,530	17,142	25,960	1,400	1.3	7.6%

Exhibit 3: Percentage of Hearings with an Interpreter



The time study results reveal that use of interpreter services varies by court level and by jurisdiction. Exhibit 3 displays the percentage of hearings that involve an interpreter in each of the participating judicial circuits and districts for the three court levels. Circuit court has the lowest frequency of interpreter events, and juvenile and domestic relations district court has the highest. Additionally, select jurisdictions have a higher proportion of hearings with interpreter services. For example, roughly 20 to 25 percent of hearings in the juvenile and domestic relations district courts in the 17th (Arlington), 18th (Alexandria), and 19th (Fairfax) Judicial Districts involve an interpreter, as compared to less than one percent of hearings in the juvenile and domestic relations district courts in the 2nd (Virginia Beach) and 4th (Norfolk) Judicial Districts.

The information collected during the time study allows for the calculation of judicial workload and judicial need that explicitly takes into account the impact of interpreter services on judicial workload in areas with the greatest reliance on interpreters. This calculation requires developing separate case counts (filings) and case weights—the average amount

of judge time spent handling a case from filing through post-disposition—for cases with and without interpreters. An example of the calculation of judicial need in the 15th Judicial Circuit is provided in Exhibit 4 (Fredericksburg, Hanover, Spotsylvania, and Stafford are the counties in the 15th Judicial Circuit that participated in the study).

Exhibit 4: Calculating Implied Need for the 15th Judicial Circuit

Circuit Court	Case Weight		Filings			Workload			
	2013 study	Multiplied by ratio of time	Total	Without interpreter 97%	With interpreter 3%	Total	Without interpreter	With interpreter	Total with and without
Capital Murder	750	1,650	8	8	0	6,000	6,000	0	6,000
Felony (non-capital) and related matters	40	88	9,942	9,644	298	397,680	385,760	26,224	411,984
Misdemeanor	12	26	4,183	4,058	125	50,196	48,696	3,300	51,996
Other criminally related matters	13	29	810	786	24	10,530	10,218	686	10,904
Administrative law	104	229	55	53	2	5,720	5,512	458	5,970
Contested divorce	124	273	622	603	19	77,128	74,772	5,183	79,955
Uncontested divorce	11	24	1,425	1,382	43	15,675	15,202	1,041	16,243
Other Domestic and Family-Level 1 (more complex)	122	268	453	439	14	55,266	53,558	3,758	57,316
Other Domestic and Family-Level 2 (less complex)	85	187	203	197	6	17,255	16,745	1,122	17,867
General Civil- Level 1 (more complex)	454	999	62	60	2	28,148	27,240	1,998	29,238
General Civil-Level 2 (intermediate Complexity)	68	150	1,328	1,288	40	90,304	87,584	5,984	93,568
General Civil-Level 3 (less Complex)	28	62	587	569	18	16,436	15,932	1,109	17,041
Probate/Wills and Trusts-Level 1 (more Complex)	140	308	9	9	0	1,260	1,260	0	1,260
Probate/Wills and Trusts-Level 2 (less Complex)	26	57	129	125	4	3,354	3,250	229	3,479
Protective Order	28	62	61	59	2	1,708	1,652	123	1,775
Miscellaneous (Civil)	5	11	3,246	3,149	97	16,230	15,745	1,067	16,812
			23,123	22,429	694	792,890	769,126	52,281	821,407
<i>Ratio of time</i>		2.2			Implied Need	11.1			11.5

The 2013 judicial workload assessment developed case weights for distinct case type categories within each court level. For example, in circuit court judges devote 40 minutes of time throughout the life of the case, on average, to each Felony (non-capital) case and related matters. To calculate judicial workload, the case weights are multiplied by the number of filings for each case type category. For example, multiplying the 9,942 Felony (non-capital) and related matters in the 15th Judicial Circuit by the 2013 case weight results in 397,680 minutes of judicial work. The implied need is calculated by summing all judicial workload for each of the case type categories (792,890 minutes) and dividing by the judge year value—the amount of time a judge has available for case-related work on an annual basis (71,280 minutes).¹² Overall, 11.1 FTE judges are needed to handle the workload in the 15th Judicial Circuit based upon the 2013 case weights.

When an interpreter is involved, each case in circuit court takes 2.2 times longer. For example, a Felony (non-capital) and related matters with an interpreter would take, on average, 88 minutes (40 minutes x 2.2) and a Misdemeanor case involving an interpreter would take, on average, 26 minutes (12 x 2.2) of judge time. To calculate the workload for cases with an interpreter necessitates dividing the total filings into cases with and without an interpreter. Based on the time study, three percent of all hearings in the 15th Judicial Circuit included an interpreter. This proportion is used to split the total filings into two categories. For example, there are 4,183 Misdemeanor filings in the 15th Judicial Circuit. Multiplying the filings by the rate of interpreter use (three percent) implies that 125 of these Misdemeanor cases involve an interpreter, and 4,058 do not. After the filings have been disaggregated, the filings involving an interpreter can be multiplied by the new case

weights (e.g., 26 minutes for Misdemeanor cases) and the filings without an interpreter can be multiplied by the 2013 case weights to calculate judicial workload. Summing the workload and dividing by the judge year value results in the implied judge need. Accounting for additional judicial work associated with cases involving interpreters increased the workload of the 15th Circuit Court from 792,890 minutes to 821,407 minutes, or an increase in the implied need from 11.1 to 11.5 FTE judges.

Calculating the impact of the use of interpreters in each of the circuits and district courts requires making two adjustments.

- 1) Multiplying the 2013 case weights by the interpreter multiplier (ratio of time) in each court level:
 - a. 2.2 for circuit court
 - b. 2.6 for general district court
 - c. 1.3 for juvenile and domestic relations court
- 2) Dividing the filings into two categories—cases with an interpreter and cases without an interpreter. The method of dividing the total filings is based on applying the calculated proportion of hearings with and without an interpreter for *each individual circuit or district*, from the time study. Applying the proportions calculated from the time study for each individual circuit or district ensures that the methodology accommodates the existing variations in the rate of interpreter usage between jurisdictions.

Exhibit 5 shows the two sets of case weights (i.e., 2013 study and interpreter adjusted) for the three court levels, while the proportion of filings with an interpreter by individual jurisdiction are shown in the far right-hand column of Exhibit 2.

¹² The 2013 study established separate judge year values for circuit and district and for single and multi-jurisdiction courts. Single jurisdiction circuit courts have a judge year value of 75,168 minutes (216 days * 5.8 hours per day * 60 minutes) and multi-jurisdiction circuit courts have a judge year value of 71,280 minutes (216 days * 5.5 hours per day

* 60 minutes). General district and juvenile and domestic relations district courts have year values of 71,280 minutes for single jurisdiction districts and 67,392 minutes (216 days * 5.2 hours per day * 60 minutes) for multi-jurisdiction districts.

Exhibit 5: 2013 and Interpreter Adjusted Case Weights

	Case Weight			Case Weight	
	2013 study	Multiplied by ratio of time [2.2]		2013 study	Multiplied by ratio of time [2.6]
Circuit Court			General District Court		
Capital Murder	750	1,650	Garnishments and Interrogatories	.8	2
Felony (non-capital) and related matters	40	88	General Civil	3.4	9
Misdemeanor	12	26	Landlord/Tenant	2.4	6
Other criminally related matters	13	29	Involuntary Commitment	6.0	16
Administrative law	104	229	Protective Order	15.0	39
Contested divorce	124	273	Felony	13.0	34
Uncontested divorce	11	24	Misdemeanor	5.0	13
Other Domestic and Family-Level 1 (more complex)	122	268	Traffic Infraction/Civil Violation	2.0	5
Other Domestic and Family-Level 2 (less complex)	85	187			
General Civil- Level 1 (more complex)	454	999	JDR Distirct Court [1.3]		
General Civil-Level 2 (intermediate Complexity)	68	150	Child Dependency	39.0	50.7
General Civil-Level 3 (less Complex)	28	62	Child in Need of Services/Supervision	126.0	163.8
Probate/Wills and Trusts-Level 1 (more Complex)	140	308	Custody and Visitation	20.0	26.0
Probate/Wills and Trusts-Level 2 (less Complex)	26	57	Juvenile Miscellaneous	9.0	11.7
Protective Order	28	62	Delinquency	20.0	26.0
Miscellaneous (Civil)	5	11	Traffic	9.0	11.7
			Adult Criminal	15.0	19.5
			Protective Order	27.0	35.1
			Support	14.0	18.2

Implications for Judicial Need

Exhibit 6 presents the resource implications for each of the participating circuit and district courts. The first set of three columns summarize findings from the 2013 study. The first of these columns displays the implied judge need when the 2013 case weights are applied to overall filings.¹³ The second column shows the 2013 workload based need plus any qualitative FTE

adjustments that were made by JNAC to account for increased workload demands due to higher proportions of interpreter cases in select judicial districts (with workload based need underlined for the districts receiving the adjustment).¹⁴ The third column shows the final judicial FTE recommendations based on the complete model, rounding the fractional need up or down in each circuit and district to a whole number of judicial positions.¹⁵

¹³ The workload based need does not include the chief judge adjustment, interpreter adjustment, or criminal case count adjustments made to the implied need presented in the 2013 Virginia Judicial Workload Assessment report.

¹⁴ At the time of the 2013 study, limited information was available on the level of interpreter use across the state. The NCSC conducted exploratory analysis of Fiscal Year 2012 data on the number of service events when foreign language services are provided by an individual interpreter. The analysis revealed that the frequency of events requiring interpreter services is greater for general district courts and juvenile and domestic relations district courts in Northern Virginia. To accommodate for the increased workload

explicitly associated with greater interpreter activity, the JNAC agreed to make judicial FTE adjustments to the implied need in a select set of judicial districts. For example, the Fairfax General District Court received a .5 FTE upward adjustment and the Fairfax Juvenile and Domestic Relations District Court received a .3 FTE upward adjustment.

¹⁵ The total rounded implied need incorporates all adjustments made to the estimated judicial need in each circuit and district, including the chief judge adjustment, interpreter need adjustment and criminal case count adjustment contained in the 2013 report. The Chief Judge in each judicial circuit and district received a .1 FTE

The second set of two columns shows the impact on judicial need related to interpreter activity. The first of these columns shows the proportion of hearings with an interpreter in each of the

circuits and districts. The final column shows the implied need when separate case weights are applied to filings with and without interpreters.

Exhibit 6: Implied Judge Need (FTE)

Circuit Court	2013 Study (FTE)			Interpreter Study (FTE)	
	Workload based need	Workload based need + interpreter adjustment	Final model need (rounded)	% Hearings w/ interpr	With multiplier 2.2
2	8.4	8.4	9	.4%	8.4
4	8.2	8.2	8	.3%	8.2
7	6.1	6.1	6	.7%	6.2
12	5.6	5.6	6	1.5%	5.7
14	4.8	4.8	5	1.1%	4.9
15	11.1	11.1	11	3.0%	11.5
16	5.5	5.5	6	2.7%	5.7
17	2.7	2.7	3	2.8%	2.8
18	4.1	4.1	4	4.5%	4.4
19*	12.5	12.5	15	6.1%	13.4
20	4.6	4.6	5	1.8%	4.7
23	5.2	5.2	5	1.7%	5.3
26	7.5	7.5	8	4.0%	7.9
31	5.5	5.5	6	4.3%	5.7
	91.8	91.8	97		94.8

*The difference between Workload Based Need and Final Model Need is due to the Criminal Case Count adjustment of 2 FTE.

adjustment to accommodate additional administrative responsibilities associated with the position. In addition, the OES currently tallies criminal (felony and misdemeanor) case filings based upon charge counts, rather than counting all charges against an individual defendant arising from a single incident as one case. In jurisdictions where charges per defendants are significantly lower than the state average, workload and implied need may be biased downward. For example, statewide the average number of

charges per defendant is 2.9, based upon a three-year average of case counts. In contrast, the average number of charges per defendant in the 19th Judicial Circuit is 1.2 charges per defendant. To accommodate for variations in local prosecutorial practice, JNAC unanimously agreed to make FTE adjustments to the implied need for a select set of Circuits where the ratio of charges per defendant is lower than the state average.

Exhibit 6: Implied Judge Need (FTE), continued

General District Court	2013 Study (FTE)			Interpreter Study (FTE)	
	Workload based need	Workload based need + interpreter adjustment	Final model need (rounded)	% Hearings w/ interpr	With multiplier 2.6
2	7.1	7.1	7	1.0%	7.2
4	5.6	5.6	6	.8%	5.6
12	5.3	5.3	5	4.8%	5.7
13	6.3	6.3	6	4.1%	6.7
14	5.0	5.0	5	1.5%	5.1
15	7.7	7.7	8	1.9%	8.0
16	4.2	4.2	4	12.3%	5.0
17	2.5	<u>2.6</u>	3	6.4%	2.8
18	1.3	1.3	2	6.3%	1.5
19	9.9	<u>10.4</u>	11	6.3%	10.9
20	3.3	<u>3.4</u>	4	3.8%	3.5
23	4.4	4.4	4	1.1%	4.5
26	5.2	5.2	5	4.8%	5.6
31	5.0	<u>5.2</u>	5	4.6%	5.3
	72.8	73.7	75		77.4
JDR District Court	2013 Study (FTE)			Interpreter Study (FTE)	
Workload based need	Workload based need + interpreter adjustment	Final model need (rounded)	% Hearings w/ interpr	With multiplier 1.3	
2	6.5	6.5	7	.5%	6.5
4	5.1	5.1	5	.4%	5.1
7	3.7	3.7	4	1.3%	3.7
12	5.9	5.9	6	3.4%	6.0
13	4.3	4.3	4	2.7%	4.3
14	5.3	5.3	5	2.3%	5.4
15	9.9	9.9	10	1.0%	9.9
16	5.8	5.8	6	4.8%	5.9
17	1.5	<u>1.6</u>	2	27.5%	1.6
18	1.6	<u>1.7</u>	2	24.1%	1.7
19	6.2	<u>6.5</u>	7	22.6%	6.7
20	3.2	<u>3.3</u>	3	8.2%	3.3
23	4.7	4.7	5	1.9%	4.7
26	6.5	6.5	7	6.6%	6.7
31	5.0	<u>5.3</u>	5	14.7%	5.2
	75.2	76.1	78		76.7

There are two primary ways to assess the results. The first method is to compare Workload based need (column 2) with Workload based need with multiplier (column 6). This comparison shows the addition to overall judicial workload brought on solely by interpreter activity in each jurisdiction. For example, looking over the panel for circuit court shows variation across the circuits. Many circuits show no change (e.g., Virginia Beach and Norfolk) or a minimal impact of .1 or .2 judicial FTE (e.g., Newport News and Prince William). The largest effect is in Fredericksburg, Hanover, Spotsylvania, and Stafford (.4 FTE) and Fairfax (.9 FTE).

The smallest impact of interpreter activity is found in juvenile and domestic relations district courts, with only Fairfax (.5 FTE) showing an increase greater than .2 FTE. The largest impact is in general district court, with five districts showing an increase of .4 FTE or greater. Again, the largest impact is found in Fairfax (1.0 FTE). These results largely reflect the role of the “interpreter multiplier” derived from the time study results. For example, the general district court interpreter multiplier of 2.6 has a much greater effect on estimated workload than the juvenile and domestic relations district court interpreter multiplier of 1.3.

The second way to assess the results is to compare the impact of interpreter activity on judicial need (column 6) with the overall results from the 2013 study (column 4). In calculating judicial need, the weighted caseload model typically produces an estimate that contains a fractional judgeship (e.g., 8.4 judges in the 2nd Judicial Circuit). The 2013 study used the Equal Proportions Method to round fractional judicial need to whole judicial positions. Comparing the Workload based need with multiplier (column 6) with Final model need (Rounded) (column 4) provides a way to see whether the additional fractional need brought on by interpreter activity

is sufficient to change the recommended number of judicial position in each circuit and district coming out of the 2013 study. One caveat, as addressed in the 2013 report, is the expectation that in some instances when implied need exceeds the number of sitting judges (e.g., an implied need of 3.3 judicial FTE in a circuit with 3 sitting judges), the current complement of judges can organize to handle the additional workload, perhaps with periodic help from a retired or substitute judge.

Assessing the explicit effect of interpreter activity on the final 2013 recommendations for FTE judicial positions by circuit and district shows a relatively small impact. In fact, for circuit court and juvenile and domestic relations district court, the 2013 model results appear to remain accurate for all jurisdictions (with the possible exception of the 15th Judicial Circuit). However, there are several general district courts where use of the interpreter multiplier implies judicial workload is approaching or even above the threshold where another full-time judicial officer is necessary to effectively handle cases coming before the court. General district courts in the 12th, 13th, 16th, and 26th all have Workload based need with multiplier that is .6 FTE or greater than the Final model need. Again, the primary driver of this result is the relatively high interpreter multiplier of 2.6.¹⁶

The interpreter multiplier helps establish baseline criteria for assessing whether each jurisdiction with above average interpreter activity has sufficient judicial resources. Time study results and input gathered during the site visits lead NCSC staff to believe that no new judgeships are needed statewide due to high levels of interpreter activity.

¹⁶ The interpreter multiplier of 2.6 is calculated as the average across all participating jurisdictions. Although individual court sample sizes are typically small, general district courts in the 12th, 13th, 16th, and 26th all have

individual interpreter multipliers that range between 1.5 and 2.2.

Recommendations

Recommendation No. 1: The NCSC recommends that judicial resources be reallocated to help offset the additional judicial workload associated with cases involving court interpreters. Hearings involving interpreters take longer, and thus require more judicial time than similar cases not involving interpreters. In most jurisdictions across the Commonwealth, the frequency of cases involving interpreters is very low. The analysis shows, in most instances, the number of judicial positions recommended in the 2013 report are sufficient to effectively handle all cases entering the court—even in jurisdictions with above average interpreter activity. Existing judicial resources are able to absorb the additional work with minimal impact on individual dockets and the overall workload of the Court. In a small number of general district courts, there is evidence that additional judicial resources may be needed to handle the extra work associated with caseloads that contain a high proportion of cases involving interpreters.

In addition, the OES should make available the results of this study to those seeking additional judicial resources through established procedures in order to underscore the impact of such an increase on existing interpreter resources.

Recommendation No.2: The OES should continue to encourage the use of existing systems and consider development of additional capabilities that will enable it to more accurately and reliably anticipate and count cases involving interpreters.

The current study has developed estimates of the proportion of cases with and without interpreter involvement. Over time, as demographics shift across the Commonwealth, these proportions will become less valid.

The OES should incorporate language access needs as part of its continuing assessment and calculation of judicial need in each jurisdiction and court level as interpreter service demands change over time.

Recommendation No. 3: The OES should continue to assess the need and to seek increases, if necessary, in the number of qualified interpreters (OES staff and vendors) required in the Commonwealth of Virginia to provide quality court interpretation services to LEP individuals. Conducting a workload assessment for interpreter services would provide the OES with an empirically-based methodology to identify interpreter resource needs.

While the interpreter multipliers are empirically based, the OES should consider further investigation into the underlying reasons for the observed differences in additional judicial workload as a result of interpretation services. Site visits revealed there are currently different practices and procedures (e.g., scheduling, types of interpreters, technology) being used in different jurisdictions that impact the quality and timeliness of interpreter services. As such, the OES should continue work to support courts in the implementation of best practices to improve efficiency and effectiveness when providing interpreting services. The OES may wish to focus, in particular, on further development of effective strategies for the timely scheduling of cases that need interpreter services, identifying service gaps that could be improved through technology, and improving the quality of interpreting service events through increased training and certification.