

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-129
For business meeting on July 24, 2020

Title

Trial Courts: Interim Caseweight for Mental Health Certification Hearings for Use in Resource Assessment Study Model

Rules, Forms, Standards, or Statutes Affected None

Recommended by

Workload Assessment Advisory Committee Hon. Lorna A. Alksne, Chair Judicial Council staff Kristin Greenaway, Supervising Research Analyst Office of Court Research

Agenda Item Type

Action Required

Effective Date July 24, 2020

Date of Report June 30, 2020

Contact

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Executive Summary

The Workload Assessment Advisory Committee recommends the adoption of a new, interim caseweight to measure the workload of mental health certification hearings under Welfare and Institutions Code section 5250 that are performed by court staff. As of July 1, 2018, this type of matter is now counted as a filing in the Judicial Branch Statistical Information System but has a very different workload profile than that of other mental health filings. Establishing an interim, separate weight for this workload until a more permanent weight can be developed (during the next Resource Assessment Study update) will help ensure that the workload for this case type is captured as part of the Resource Assessment Study and the Workload Formula for fiscal year 2020–21.

Recommendation

The Workload Assessment Advisory Committee recommends that the Judicial Council, effective July 24, 2020, adopt a new, interim caseweight to be applied to mental health certification

hearings under Welfare and Institutions Code section 5250. If approved, this interim caseweight will be applied for use in the fiscal year 2020–21 Resource Assessment Study estimate of full-time equivalent staff in the trial courts, which is the basis for the Workload Formula. This interim caseweight would remain effective until the workload can be more fully studied during the Resource Assessment Study model update to be conducted in approximately fiscal year 2021–22.

Relevant Previous Council Action

In 2000, the Judicial Council's Office of Court Research was directed to develop workload measures for case processing trial court staff (Programs 10 and 90) with the goal of developing a method for allocating resources to the trial courts that takes into account workload. The Judicial Council approved the Resource Assessment Study (RAS) model at its July 20, 2005, meeting (see Link A).¹

In February 2013, the council approved an updated version of RAS caseweights and other model parameters derived from a 2010 time study (see Link B). In that same year, the council approved a recommendation to adopt a new funding model, the Workload-based Allocation and Funding Methodology (WAFM), that would use the RAS model as the basis for its workload-based funding model (see Link C). This funding model is now referred to as the Workload Formula.

In July 2017, the council approved an updated version of RAS with caseweights and other model parameters derived from a 2016 time study (see Link D) and directed the Workload Assessment Advisory Committee (WAAC) to conduct any necessary interim analyses or make any technical adjustments needed prior to the next workload study update.

All previous Judicial Council approvals of the RAS model (2005, 2013, and 2017) were made with the understanding that ongoing technical adjustments would be made to the model as the need arose and as more data became available. To that end, two technical adjustments were proposed for the model following its 2013 approval: one was a recommendation from the Trial Court Budget Advisory Committee that the committee² study special circumstance workload (see Link E); the other was a request to develop an interim caseweight (pending the RAS model update) to measure the workload in complex civil cases following the dissolution of the complex civil pilot program and corresponding Trial Court Improvement and Modernization Fund funding. An interim caseweight to measure complex civil workload was approved by the council at its June 26, 2015, meeting and implemented starting with the FY 2015–16 budget allocations (see Link F).

¹ At the time, "RAS" was an acronym for "Resource Allocation Study," which was later revised to "Resource Assessment Study" to better reflect the model's use in assessing, not allocating, workload.

² The request was made of the Judicial Branch Resource Needs Assessment Advisory Committee, which later became the Workload Assessment Advisory Committee. Before becoming an advisory committee, the group was known as the SB 56 Working Group.

Finally, in May 2018, the Judicial Council adopted an interim adjustment to the methodology used to measure workload for infractions cases (see Link G).

Analysis/Rationale

Since the initial approval of the RAS model in FY 2004–05, the number of categories in which filings are reported has expanded and data reporting by trial courts has become more complete. As data gathering and data reporting improve and as more detailed filings data become available, the ability to further refine the RAS model and expand the number of caseweights is increased. Additionally, as noted, interim adjustments to the model may be necessary if important changes impacting workload happen outside the periodic RAS model updates.

In January 2018, the Judicial Council approved a recommendation by the Court Executives Advisory Committee to make a series of updates and modifications to the Judicial Branch Statistical Information System (JBSIS) to clarify and improve filings data reporting. These updates became effective on July 1, 2018 or beginning with FY 2018–19 data reporting. Among the changes made, certification hearings performed under Welfare and Institutions Code section 5250 and that are conducted by court staff are now reported as a separate filing category in JBSIS under Report 10A: Mental Health.

Adjustment request process (ARP) proposal

The Trial Court Budget Advisory Committee (TCBAC) adopted a policy to institute an annual adjustment request process through which trial courts can make recommendations for changes to the Workload Formula (see Link H). ARPs that concern workload measurement in the underlying Resource Assessment Study model are referred to the Workload Assessment Advisory Committee for its consideration.

In December 2018, the Superior Courts of Los Angeles County and San Diego County submitted an adjustment request seeking to adopt a new RAS caseweight for certification hearings and to include them in the Workload Formula (see Attachment 1). TCBAC received the ARP and referred it to the Workload Assessment Advisory Committee as the committee with the subject matter expertise on the issue.³ On March 3, 2020, the committee discussed the ARP and directed staff to:

- 1. Measure the referenced workload as part of the RAS model;
- 2. Develop an interim solution to capture this workload until the next RAS update scheduled in approximately FY 2021–22;

³ Per ARP policy, "The Administrative Director shall forward the request to the Director of Judicial Council Budget Services. The Director, in consultation with the Chair of the Trial Court Budget Advisory Committee (TCBAC) shall review each request and refer the request to the Funding Methodology Subcommittee (FMS) no later than April. If the request is more appropriately referred to another advisory committee, the Chair may do so immediately. The Chair will notify TCBAC no later than April of requests that have been referred to other advisory bodies." Workload Formula Adjustment Request Procedures (updated Mar. 21, 2019), https://jcc.legistar.com/View.ashx?M=F&ID=7188751&GUID=A90AB7DB-FA13-43B5-8817-947ABF3AB919.

- 3. Study the workload associated with this filing type and develop a new and separate caseweight in the next RAS update scheduled in approximately FY 2021–22 for the committee's consideration; and
- 4. Work with the Audit Services team to ensure these filings are being reported correctly by the courts.

The recommendation in this report specifically addresses the second item, that Judicial Council staff develop an interim caseweight to capture the workload until the next RAS update, scheduled in approximately FY 2021–22.

JBSIS reporting

The Welfare and Institutions Code requires hearing officers for the purpose of conducting hospital-based hearings under section 5256.1 and other sections. In certain counties, the superior court funds the costs of these hearing officers per rule 10.810(d) of the California Rules of Court, which includes as allowable costs "mental health hearing officer" under Program 10 (see Link I). As stated in the request, the workload involved in these hearings is not currently captured by RAS or the Workload Formula and therefore is not currently accounted for in the funding model because, prior to 2018, certification hearings under this code were not reported in JBSIS as a filing.

As of July 1, 2018, these certification hearings will be reported as new filings. Because there are differences across the state in how certification hearings are held, the JBSIS Manual (v3.0) includes a definition to specify which courts should report this workload:

A certification filing should only be counted if the certification hearing is handled by a judge, subordinate judicial officer (SJO), mental health hearing officer of the court, or other court-employed personnel. A certification filing should not be counted if the certification hearing is handled by county personnel not employed by the court.⁴

Thirteen courts reported approximately 52,000 certification hearings in FY 2018–19 (see Attachment 2). The number of certification hearings reported is significantly higher than the number of mental health filings reported. To give an idea of scale, the Superior Court of Los Angeles County reported approximately 10,000 mental health filings in FY 2018–19 but is reporting about 40,000 certification hearings for FY 2018–19, for a total of 50,000 mental health filings—a 400 percent increase.

Interim caseweight

The short amount of time available to develop a caseweight that could be implemented starting with the FY 2020–21 trial court budget allocations prevented staff from conducting a time study

⁴ Judicial Council of Cal., *Judicial Branch: Revisions to the Judicial Branch Statistical Information System (JBSIS)*, (Dec. 18, 2017), Attachment A, p. 52, https://jcc.legistar.com/View.ashx?M=F&ID=5709414&GUID=E0760C1C-3C6C-4E45-8DE6-ED9998E7BB6A.

or doing onsite data collection. However, the courts that proposed the adjustment provided enough data about the costs to hold the hearings that could be utilized to create an interim weight.

To develop an interim caseweight, Judicial Council staff utilized data including FY 2017–18 cost information provided by the two courts that submitted the ARP (Los Angeles and San Diego), FY 2018–19 filings data, each court's FY 2019–20 full-time equivalent (FTE) Workload Formula (WF) cost (using 2015–2018 data),⁵ and the RAS work year value (see table 1). Using these data points, the caseweight was then weighted to the volume of filings reported for each court, resulting in a proposed interim caseweight of 48.5 minutes per filing for certification hearings. The current mental health caseweight is 324.

Table 1. Data Points

Court	Cost	Filings	WF Cost per FTE	Minutes
Los Angeles	\$2,700,000	40,789	\$155,460	98,550
San Diego	\$652,040	3,696	\$144,714	
Total		44,485		

Interim caseweight calculation

Using the data points in table 1, the proposed caseweight was calculated as follows:

Step 1. Calculate estimated FTE per court

Program Cost / Workload Formula Cost per FTE = FTE

Los Angeles: \$2,700,000 / 155,460 = **17.4 FTE**

San Diego: \$652,040 / 144,714 = **4.5 FTE**

Step 2. Calculate each court's caseweight

(FTE * Work Year Value (in minutes)) / Filings

Los Angeles: 17.4 * 98,550 / 40,789 = 42.0

San Diego: 4.5 * 98,550 / 3,696 = 120.1

Step 3. Calculate weighted caseweight

(Court Filings / Total Filings) * Court Caseweight

Los Angeles: (40,789 / 44,485) * 42.0 = 38.5

⁵ The per FTE Workload Formula (WF) cost is each court's total WF need divided by its total RAS FTE need.

San Diego: (3,696 / 44,485) * 120.1 = 10.0

Weighted Caseweight: 38.5 + 10.0 = 48.5

Because the caseweight of 48.5 is based only on two courts, it may be different when the workload associated with this filing is studied more extensively during the next RAS model update in approximately FY 2021–22.

The proposed caseweight was circulated to the members of the Workload Assessment Advisory Committee for a vote via an action by email on March 26, 2020. It was approved by the committee (8 Yes, 3 Abstain, 0 No). The three abstaining members were from the two courts that had proposed the ARP.

For FY 2020–21, the interim caseweight will be applied to all courts that submitted data in this new filing category (data submitted for FY 2018–19). However, further work will be done, in consultation with the branch's Audit Services team, to ensure that, moving forward, the weight is only applied to courts whose workload meets the JBSIS definition.

Policy implications

This interim caseweight is intended to improve the measurement of court workload in mental health cases by applying a more appropriate weight for this newly reported subset of mental health filings. If approved, this adjustment will be implemented for the FY 2020–21 RAS to estimate FTEs in the trial courts, which is the basis for trial court budget allocation purposes for use in the Workload Formula. It will remain effective until a permanent weight is established the next time the RAS workload study is conducted.

Comments

This item was discussed at two public meetings of WAAC, on March 3, 2020, and March 26, 2020 and one public meeting of TCBAC, on June 11, 2020. No public comment was received.

Alternatives considered

In addition to developing an interim caseweight, WAAC considered whether to apply the current mental health caseweight to this subset of mental filings or to remove this subset of filings and not include this workload as part of RAS FTE estimate until a more permanent caseweight could be developed when the RAS model update is conducted in FY 2021–22. WAAC decided it was best to develop a separate weight because the current mental health caseweight would overestimate the workload of the certification hearing workload. Additionally, the committee thought the workload should be captured with an interim weight for FY 2020–21 because the workload is appropriate to be included in the RAS model and because courts are currently undertaking this workload.

Fiscal and Operational Impacts

There is no fiscal impact to the judicial branch to implement the recommendation, other than the staff and committee time invested to analyze and develop the recommendation and to update the calculations in the workload model to implement it

Adopting this recommendation will have a fiscal impact on the branch's workload formula calculation. If adopted, the interim weight will be applied to approximately 52,000 filings in the 13 courts that reported this workload. Since some courts reported very few of these filings and the case weight itself is relatively low, only four courts (Alameda, Los Angeles, San Diego, and San Francisco) will actually show an increase in their RAS FTE and corresponding increase in their Workload Formula. The overall impact to the branch's Workload Formula is an increase of about \$5 million, or about 0.2%.

This policy recommendation changes each court's share of the Workload Formula, with four courts' share increasing and all other courts decreasing slightly. The impact of this policy change on Workload Formula allocations in each court depends on a number of factors, including the amount of available funding for trial courts and Judicial Council policy regarding workload-based allocations. Other factors include the relative funding levels of the courts whose Workload Formula increases as a result of this policy change as compared to the statewide average funding level.

Attachments and Links

- 1. Attachment 1: 12-14-2018 WAFM Adjustment Request LA SD
- 2. Attachment 2: FY 2018–19 5250 Filings
- 3. Link A: Judicial Council of Cal., Fiscal Year 2005–2006 Trial Court Budget Allocations (July 20, 2005), www.courts.ca.gov/documents/0705item1.pdf
- 4. Link B: Judicial Council of Cal., *Trial Courts: Update of the Resource Assessment Study Model* (Feb. 8, 2016), www.courts.ca.gov/documents/jc-20130226-itemM.pdf
- 5. Link C: Judicial Council of Cal., *Trial Court Budget Working Group: Recommendation of New Budget Development and Allocation Methodology* (Apr. 24, 2013), www.courts.ca.gov/documents/jc-20130426-itemP.pdf
- 6. Link D: Judicial Council of Cal., *Trial Court Allocations: Revisions to the Workload-Based Allocation and Funding Methodology* (Feb. 10, 2014), <u>www.courts.ca.gov/documents/jc-20140220-itemK.pdf</u>
- 7. Link E: Judicial Council of Cal., *Trial Courts: Resource Assessment Study Model Interim Complex Civil Caseweight* (June 3, 2015), <u>www.courts.ca.gov/documents/jc-20150626-item4.pdf</u>
- 8. Link F: Judicial Council of Cal., *Trial Courts: Update of Resource Assessment Study Model* (June 13, 2017), https://jcc.legistar.com/View.ashx?M=F&ID=5338582&GUID=FA2962D0-141A-40D4-B9CA-CB5C2467A49C

- 9. Link G: Judicial Council of Cal., *Trial Courts: Revise Workload Measurement of Infractions Cases in Resource Assessment Study Model* (May 9, 2018), https://jcc.legistar.com/View.ashx?M=F&ID=6241169&GUID=2601E0BE-8575-44C6-8ACE-A1A0AD48FBC8
- 10. Link H: Judicial Council of Cal., *Judicial Branch Budget: Workload Formula Adjustment Request Process Policy Update* (Apr. 26, 2019), https://jcc.legistar.com/View.ashx?M=F&ID=7188751&GUID=A90AB7DB-FA13-43B5-8817-947ABF3AB919
- 11. Link I: Cal. Rules of Court, rule 10.810 (Court operations) www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_810



December 14, 2018

Martin Hoshino Administrative Director Judicial Council of California 455 Golden Gate Ave. San Francisco, CA

Re: Workload-Based Allocation and Funding Methodology (WAFM) Adjustment Request

Dear Mr. Hoshino,

Please accept the attached WAFM Adjustment Request, jointly proposed by the Superior Courts of Los Angeles and San Diego, to include in the RAS and WAFM models the workload from certification hospital hearings under Welfare and Institutions Code 5256 and other sections, as proposed in the attached request.

Sincerely,

Sherri R. Carter

Executive Officer/Clerk of Court

Los Angeles Superior Court

Michael M. Roddy

Executive Officer

San Diego Superior Court

c: Hon. Jonathan B. Conklin, Trial Court Budget Advisory Committee Chair tcbac@jud.ca.gov

Proposal to adopt a new RAS case weight for, and to include in WAFM, certification hearings performed under Welfare and Institutions Code sections 5256 et seq.

Jointly proposed by the Los Angeles Superior Court and the San Diego Superior Court.

1. A description of how the factor is not currently accounted for in WAFM.

The Welfare and Institutions Code requires hearing officers for the purpose of conducting hospital-based hearings under section 5256.1 and other sections (see below for more detail). In certain counties, the Superior Court funds the costs of these hearing officers per California Rule of Court 10.810(d), which includes as allowable costs "mental health hearing officer" under Function 10. The workload involved in these hearings is not captured by RAS/WAFM.

First, the workload of the certification hearings is not picked up through any existing workload categories in RAS/WAFM. Certification hearings are done after a "5150 hold" is placed upon an individual, and the hospital holding the individual desires to extend the hold. The hearings are not "subsequent" hearings related to any other type of filing measured by RAS. They do not typically arise pursuant to an LPS Conservatorship, a question of competence to stand trial, or other mental health proceeding; the court is not involved in a 5150 hold. This is orphaned workload; RAS does not capture this workload in any case category and thus WAFM does not fund it.

Second, JCC staff does not include certification as new filings under RAS/WAFM. In fact, until revisions were made to the JBSIS Manual in January, 2018, JBSIS was not able to capture these hearings as workload. JBSIS Manual v2.3 (replaced by v3.0 as of FY18-19) allowed for reporting of these hearings – but not under JBSIS Row 200, which captures new filings used for measurement of workload. Recognizing this gap, the CEAC JBSIS Subcommittee recommended, and the Judicial Council adopted, changes to the JBSIS Manual v3.0 that allow courts to report certification hearings on Row 200 as new filings.

Recognizing differences across the state in how the certification hearings are held, JBSIS Manual v3.0 includes the following definition of reportable workload:

A certification filing should only be counted if the certification hearing is handled by a judge, subordinate judicial officer (SJO), mental health hearing officer of the court, or other court- employed personnel. A certification filing should not be

¹ Technical note: In the Data Matrix under JBSIS v2.3, the JBSIS column in which they were captured, Column 10, did not map onto Row 200, which captures workload. JBSIS Manual v3.0 allows Column 10 filings to be reported on Row 200.

counted if the certification hearing is handled by county personnel not employed by the court. [Judicial Branch: Revisions to the Judicial Branch Statistical Information System (JBSIS), Report to the Judicial Council of December 18, 2017, p. 52.

As noted in the *Report to the Judicial Council* from December 18, 2017, recommending the above revisions to the JBSIS Manual (among other changes), CEAC suggests:

Because of the significant changes to the Mental Health case type categories, the Workload Assessment Advisory Committee (WAAC) will need to evaluate which filings data to use in RAS. [Judicial Branch: Revisions to the Judicial Branch Statistical Information System (JBSIS), Report to the Judicial Council of December 18, 2017, p. 60.

A first step, however, is to determine that this workload belongs in RAS/WAFM. If it is decided that the certification hearings captured by JBSIS should count as workload in RAS, a case weight can be assigned to them and JBSIS-reported workload data can be incorporated in RAS/WAFM.

2. Identification and description of the basis for which adjustment is requested.

The Welfare and Institutions Code requires hearing officers for the purpose of conducting hospital-based hearings as cited below (i.e., "certification review hearings" following involuntary hospitalization under section 5250).

WIC 5256: When a person is certified for intensive treatment pursuant to Sections 5250 and 5270.15, a certification review hearing shall be held unless judicial review has been requested as provided in Sections 5275 and 5276. The certification review hearing shall be within four days of the date on which the person is certified for a period of intensive treatment unless postponed by request of the person or his or her attorney or advocate. Hearings may be postponed for 48 hours or, in counties with a population of 100,000 or less, until the next regularly scheduled hearing date.

WIC 5256.1: The certification review hearing shall be conducted by either a courtappointed commissioner or a referee, or a certification review hearing officer.[...]

WIC 5270.15: (a) Upon the completion of a 14-day period of intensive treatment pursuant to Section 5250, the person may be certified for an additional period of not more than 30 days of intensive treatment[...] (b) A person certified for an additional 30 days pursuant to this article shall be provided a certification review hearing in accordance with Section 5256 unless a judicial review is requested pursuant to Article 5 (commencing with Section 5275).

And see Doe v. Gallinot, 486 F.Supp. 983 (1979), which requires a due process hearing for patients certified for involuntary psychiatric treatment.

In certain counties, the Superior Court funds the costs of these hearing officers per California Rule of Court 10.810(d), which includes as allowable costs "mental health hearing officer" under Function 10. However, RAS does not capture this workload and therefore WAFM does not fund it (see next section).

3. A detailed analysis of why the adjustment is necessary.

No other funding is available for this mandated work. These certification hearings are a statutory mandate.

In both the Los Angeles and San Diego courts, significant court resources are spent on this work (authorized under CRC 10.810):

- In FY17-18, the Los Angeles Superior Court spent \$2.7 million on court-employed hearing referees and support staff dedicated solely to certification hearings.
- In FY17-18, the San Diego Superior court spent \$652,040 on court-employed hearing referees and support staff dedicated solely to certification hearings. *Note: This does not include \$55,537 in employee costs for Riese hearings, which is reimbursed by the County of San Diego.*

These funds are available only from the Courts' WAFM-related allocation; no other funding sources are available. The lack of inclusion in the RAS/WAFM model means that those funds must be reallocated from other areas, reducing each Court's ability to adequately meet other obligations.

4. A description of whether the unaccounted for factor is unique to the applicant court(s) or has broader application.

Any Court that meets the JBSIS definition of court-provided hearing officer in JBSIS Manual 3.0 would be able to report certification hearings and receive RAS/WAFM workload credit for them.

5. Detailed description of staffing need(s) and/or costs required to support the unaccounted for factor. *Employee compensation must be based on WAFM compensation levels, not the requesting court's actual cost.

The RAS case weight is yet to be determined. In FY17-18, the Los Angeles Superior Court spent \$2.7 million on compensation for 15 Mental Health Hearing Officers and four support staff. San

Diego spent \$652,040 on compensation for 2.9 FTEs Mental Health Hearing Officers and 1.4 FTEs support staff.

6. Description of the consequence to the public and access to justice without the funding.

Because RAS/WAFM does not cover this mandated work, the work must be funded from other areas of the Court. Given the fact that all California trial courts are under-resourced, filling this funding gap means that other important services – window clerks, courtroom clerks, or clerical employees processing documents, for instance – are not available to serve the public.

7. Description of the consequences to the requesting court(s) of not receiving the funding.

Because these hearings are statutorily mandated, they must be conducted. The consequences of not receiving the funding to support this work results in funding being taken from other areas of the Court.

8. Any additional information requested by the Fiscal Services Office, Funding Methodology sub-committee or TCBAC deemed necessary to fully evaluate the request.

The people who are the subjects of certification hearings are among society's most vulnerable. Their liberty is at stake in deep and profound ways. The statutory protections offered by the Welfare and Institutions Code are among the most important duties of a Court. This work is obviously core workload; it deserves RAS/WAFM funding.

Attachment 2

FY 2018-19 Mental Health Certification

Court	Filings	
Alameda	4513	
Amador	C	
Butte	C	
Calaveras	C	
Colusa	(
Contra Costa	(
Del Norte		
El Dorado		
Fresno		
Glenn	(
Humboldt	11	
Imperial	(
Inyo		
Kern		
Kings		
Lake		
Lassen		
Los Angeles	40789	
Madera	40765	
Marin	1	
Mariposa	(
Mendocino	(
Merced	(
Modoc	(
Mono	(
Monterey	(
Napa	C	
Nevada	(
Orange	(
Placer	(
Riverside	3	
Sacramento	(
San Benito	(
San Bernardino	(
San Diego	3696	
San Francisco	2273	
San Joaquin	(
San Luis Obispo	64	
San Mateo	(
Santa Barbara	199	
Santa Cruz	(
Shasta	(
Sierra	(
Siskiyou	(
Solano	(
Sonoma	(
Stanislaus	(
Sutter	9	
Tehama		
Trinity	(
Tulare		
Tuolumne		
Ventura	488	
	39	
Yolo		
Yuba Total	52,092	