

JUDICIAL IMPACT STATEMENT

S. 2027

THE CIVIL JUSTICE REFORM ACT OF 199

PREPARED BY:

THE ADMINISTRATIVE OFFICE OF THE
U.S. COURTS

JUDICIAL IMPACT STATEMENT

THE CIVIL JUSTICE REFORM ACT OF 1990 S. 2027

S. 2027, the Civil Justice Reform Act of 1990 requires several procedural changes in U.S. district courts designed to speed up civil actions. The bill requires, among other things, that each court design and implement a plan to manage the civil caseload. Participation by judges in specified activities (for example, case management conferences) is mandated by the bill. The bill also requires that each court's civil docket be automated within 12 months.

Impact on the Judiciary

To implement S. 2702, the Judiciary would be required to expend an estimated **\$111 million** and **764 staff years or FTEs** during the first year and **\$74 million** and **545 FTEs** during each successive year.

In the first year, the bill would cost \$102 million and 710 FTEs, exclusive of automation. \$9 million and 54 FTEs would be needed for automating the courts within 12 months. The bill would cost \$74 million and 545 FTEs in each successive year. Detail is shown below:

	<u>First Year</u>		<u>Recurring</u>	
	<u>\$ in M</u>	<u>FTEs</u>	<u>\$ in M</u>	<u>FTEs</u>
<u>PROVISIONS</u>				
District court judges.....	\$74	160	\$56	121
Magistrates.....	.2	6	0	0
Clerks.....	.1	6	0	0
Support Staff (JSP-11).....	.9	174	6	141
Clerical Support (JSP-7/8)....	.5	135	3	106
Courtroom deputies (JSP-10)...	.5	121	5	121
Appellate clerks (JSP-8).....	.3	100	2	50
Other.....	.3	8	2	6
SUBTOTAL	\$102	710	\$74	545
<u>AUTOMATION</u>				
Personnel.....	\$ 4	54	0	0
Equipment.....	4	0	0	0
Training.....	.1	0	0	0
SUBTOTAL.....	\$ 9	54	0	0
TOTAL COST.....	\$111	764	\$74	545

Analytical Assumptions

The cost figures assume that no new judges would be authorized and appointed. However, judges are currently working at full capacity, and their time would necessarily be diverted from other work, which would be deferred, in order to handle the additional workload. Because the Speedy Trial Act sets time limits for disposition of criminal cases, judicial officers are currently diverting their time from the civil caseload. The 7

percent increase in criminal cases between 1988 and 1989, fueled primarily by a 17 percent increase in drug cases, indicates that this will continue. By contrast, civil cases decreased by 7 percent during that same time period, due primarily to a 20 percent drop in diversity filings as a result of the new \$50,000 jurisdictional level that became effective in May 1989.

If new judgeships were established to handle the increased workload created by the bill, the costs would far exceed those included in this analysis due to the high costs of establishing new judgeships.

The costs also do not account for those courts that are already utilizing a civil case management system. To the extent that the specific procedures required by the bill are already in place in some courts, the costs could be reduced. However, it was not possible to make such estimates in the short time period available.

Acceleration of the current automation plan for the courts might be achieved, but there are major obstacles. The current long range plan for automating the district courts calls for a rate of orderly expansion of 30 courts per year. By the end of 1990, 30 courts will be operating the civil system. Plans for 1991 and 1992 call for 30 additional courts per year, with the remaining 4 courts completed in 1993.

54 additional staff would be needed to compress this expansion to 12 months. Equipment costs would be incurred earlier than is now planned. It takes approximately 9 months to have fully trained technical staff on the job. Therefore, a significant portion of the installation and training activity would take place during the last quarter of the year, increasing the chance for errors.

Other automation problems include: (1) finding suitable space, especially at the training centers; (2) disruption of current procurement contracts for hardware; and (3) a probable reduction in the ability to service existing court users because of the need to focus on acceleration. Further, in order to allow timely procurement of equipment and services, the bill needs to authorize the bypassing of procurement regulations to allow sole source purchases. Because of these constraints, acceleration would probably only shorten the current timetable by about six months.

In addition, the current automation long range plan is in accord with legislation enacted in 1989 that established the Judiciary Automation Fund. This statute requires the Judiciary to submit its long range automation plan to Congress on an annual basis. Funds appropriated for automation must be spent in accordance with the long range plan. The acceleration provision of S. 2027 would require that the long range plan undergo major revision.

This statement does not include the cost impact on the Federal Judicial Center.

DETAILED COST ASSUMPTIONS ON THE IMPACT OF S.2027

The following briefly details the first year personnel impact, cost, and feasibility of specific provisions of S.2027:

1. Each court must develop a civil justice expense and delay reduction plan.

This requires a one time expenditure of 54.7 FTEs and \$9.2 million as follows:

	<u>\$</u>	<u>FTE</u>
- District court judges	5.0M	10.8
- Magistrates	2.0M	5.4
- Clerks	.6M	5.4
- Support staff (JSP-11)	1.6M	33.1

This assumes that 100 hours of committee and subcommittee time would be required for plan development and implementation, involving the chief judge of the district, one district court judge, one magistrate, and the clerk. A part time staff professional in each court would have to be hired for a period of approximately four months to serve as reporter, to work on revision of local rules, and to oversee development of the plan.

2. Each court shall classify civil cases upon intake for track assignment.

This requires 44 FTEs and \$2.1 million annually.

	<u>\$</u>	<u>FTE</u>
- Staff attorney (JSP-11)	1.5M	33
- Docket clerk (JSP-7)	.4M	11

This is a conservative estimate that does not take into account the extra work of assigning cases in divisional offices when there is only one staff attorney who is located at the main office. In practice, it may be necessary to fund additional attorneys to meet the needs of every district court.

3. Dispute resolution over track assignment.

This requires 15 FTEs and \$.7 million annually.

	<u>\$</u>	<u>FTE</u>
- Staff attorney (JSP-11)	.69M	14
- Docket clerk (JSP-7)	.04M	1

A high rate of disputes over track assignments is anticipated due to the significance of assignment to case progress. This estimate conservatively assumes that 10 percent of track assignments will be disputed.

4. Mandatory discovery-case management conference, presided over by a judge, held within 45 days following first responsive pleading to complaint, motion, or other paper.

This requires 90 FTEs and \$23 million annually.

	<u>\$</u>	<u>FTE</u>
- District court judge	20.9M	45
- Courtroom deputy (JSP-10)	1.9M	45

This would create significant levels of "new judge time" because most courts utilize discovery management techniques without holding in-court conferences, or they refer such matters to magistrates. The additional judge time would be without a parallel reduction in magistrate time because of the requirement for the magistrate to be present at the conference.

5. A series of monitoring conferences must be held for each "complex track" case, presided over by a judge.

This requires 151 FTEs and \$38.4 million annually.

	<u>\$</u>	<u>FTE</u>
- District court judge	35.2M	75.5
- Courtroom deputy (JSP-10)	3.2M	75.5

This will place a significant burden upon judges who effectively manage their cases now without routinely bringing the parties into court. In an average length, 2-year case, this would require a judge to hold 8 or 9 monitoring conferences in each case averaging a total of an additional 4 hours per case.

6. Each plan shall include a program for adjudication and making available to the parties and their counsel the full range of alternative dispute resolution mechanisms.

This requires 188 FTEs and \$9.8 million annually.

	<u>\$</u>	<u>FTE</u>
- Docket clerk (JSP-7)	3.4M	94
- Support staff (JSP-11)	4.8M	94
- Arbitrator fees	1.6M	0

Although it is difficult to determine the impact of this requirement due to lack of empirical experience, the development and coordination of such a network of ADR programs would be a major undertaking. The Judicial Improvements and Access to Justice Act, title IX, recently reauthorized existing arbitration programs in 10 districts and established 10 more that are limited to arbitration by consent of the parties. The 10 additional courts will cost an estimated \$40,000 to \$60,000 per year in arbitrators fees as well as the addition of one clerical position in each court.

The development of a panel to conduct the early neutral evaluation program requires substantial coordination to screen

volunteer attorneys, develop expertise, screen potential cases for the program, coordinate and schedule conferences, and evaluate results. Resources required for the implementation of mediation, minitrial and summary jury trial programs are difficult to estimate because their practice is limited in federal courts.

7. The Judicial Conference shall develop a model civil justice expense and delay reduction plan within 180 days of enactment.

This requires a one time expenditure of 1 FTE and \$.09 million. Two full time JSP-11 staff attorney positions for the 6 month period allowed as well as 5 judges, 2 magistrates, and 3 clerks meeting for at least two 3 day meetings would be required.

8. The Judicial Conference shall develop new procedural recommendations from time to time.

Some level of staff time would have to be devoted to this function. However, the provision is sufficiently vague that it was not possible to pin down the resources that would be required. Additional work would be created for the appropriate Judicial Conference Committee and Administrative Office support staff.

9. Each district court shall develop and implement a transition program for handling any backlog of cases pending more than 12 months.

This one time requirement would cost 157.2 FTEs and \$17.8 million.

	<u>\$</u>	<u>FTE</u>
- District court judge	13.3M	28.6
- Clerk (JSP-7/8)	1.1M	28.6
- Appeals clerks (JSP-8)	3.4M	100.0

In 1989, there were an estimated 90,000 cases pending more than 12 months. If the requirement that parties be present at the hearing is applied to prisoner petitions, a significant rise in the costs of prisoner transportation would be incurred by the U.S. Marshal Service. These costs are not included in the estimates presented here. As of June 1988, there were over 3,200 prisoner petitions pending.

Impact on Appeals Court. Reducing the backlog would increase the number of appeals filed in the short term. At the end of 1988, there were 102,000 cases that were pending longer than 12 months. If that backlog were disposed of within 12 months of enactment, an estimated 7,500 additional appeals would be filed, based on historical experience. Filings would gradually return to previous rates as the backlog decreased. This temporary increase would require an additional 100 appeals clerks in the first year and 50 clerks in the next year. The increase in appeals would

cause a short term slow down of the disposition rate in the courts of appeal.

10. The Administrative Office shall standardize court procedures for categorizing judicial actions, including defining what constitutes a dismissal and how long a case has been pending.

This one time cost would require .5 FTE and \$.03 million.

11. The Judicial Conference shall prepare a manual for litigation management.

This requires a one time expenditure of 1 FTE for a JSP-11 staff attorney and \$.09 million. A national committee would have to be formed to meet formally at least twice during the drafting stages and would have to be staffed full time for the duration of the project only.

12. The Administrative Office shall automate the courts' docket in each district within 12 months of enactment of the bill.

This would require 54 FTEs and cost \$8.8 million.

	<u>\$</u>	<u>FTE</u>
- Support staff (GS-12/13)	2.0M	28
- Training staff (JSP-12)	1.6M	26
- Equipment	4.3M	0
- Training space	.1M	0
- Travel	.8M	0

The additional staff hired to accelerate the program would only be needed for one year. Because of the difficulty of hiring and training staff for such a short employment period, contractor personnel might have to be used. However, this would increase the cost beyond the above estimates. Also, the need to use sole source procurements in order to meet the timetable could increase the above estimated costs.

13. Administrative Office support.

This would require 7.65 FTEs and \$0.5 million. Annually, 5.65 FTEs and \$0.4 million would be needed.

	<u>\$</u>	<u>FTE</u>
- Attorneys (GS-14)	.23M	3
- Management analysts (GS-13)	.14M	2
- Statistical analyst (GS-13)	.04M	0.65
- Administrative support (GS-7)	.04M	1
- Administrative support (GS-9)	.04M	1

Implementing the bill's provisions would require on-going support from the program divisions in the Administrative Office to prepare manuals and other materials for judges, clerks, and staff, to train staff, to devise and maintain reporting systems, to prepare and submit reports to Congress and the Judicial

Conference, to monitor the courts' efforts, and to provide on-site assistance to the courts.

Administrative support staff time would be needed because of the additional hiring of court and Administrative Office personnel in order to process the additional paperwork, find space for new personnel, procure furniture and equipment, and do other related tasks. This staff time would be needed only during the first year.