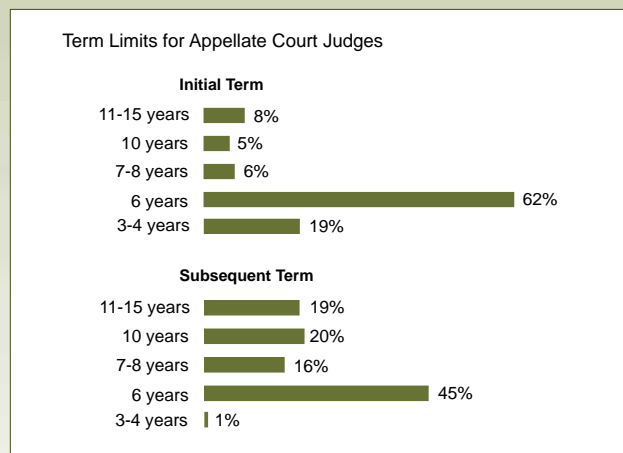
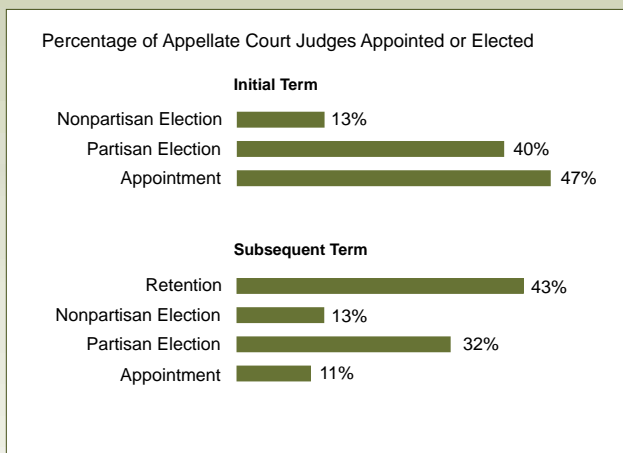


APPELLATE

Judicial selection at the appellate level varies from state to state.



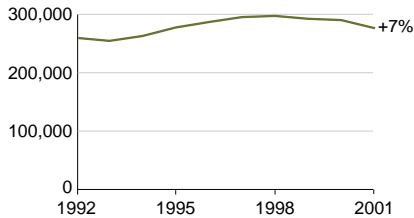
Source: National Center for State Courts, *Statement of the National Summit on Improving Judicial Selection*, 2001.

A large percentage of appellate judicial elections are conducted via partisan elections,

and term lengths of 6 years are most common.

State Court Appellate Case Filings

**Total Appellate Court Filings,
1992-2001**



Appellate courts are vital to the pursuit of judicial fairness, equity, and justice in this country. These courts, whether at the intermediate or highest level, allow for remedies to trial court error or omission, decide matters affecting our daily lives, discipline members of the court community when necessary, and render decisions determining life or death. At both the state and federal level, these courts provide the checks and balances upon which we all depend.

So important and plentiful are appeals cases that most states have seen the need to divide their appellate systems into two levels: intermediate appellate courts (IACs) as a first level of review, and courts of last resort (COLRs) to handle the most critical matters and appeals from the IACs. The 1980s saw the proliferation of intermediate appellate courts, and only 12 states presently function without at least one IAC. Interestingly, these 12 states (including the District of Columbia) are among the 17 least populous states. There are also a few larger states, such as Oklahoma and Texas, that have created more than one court of last resort.

The number of appeals filed in state appellate courts declined for the third consecutive year

In 2001, there were 276,408 cases filed in appellate courts. This figure represents the fewest number of case filings since 1994 and nearly a 5 percent decline from 2000. However, after a nearly 17 percent growth between the lowest point in 1993 and a peak in 1998, appellate caseloads are now at roughly the same level as reported in 1995. When using 1992 as a benchmark, the number of filings increased 7 percent over the 10-year period under study.

Appellate court filings vary considerably across states

The adjacent table ranks the states according to their filings per 100,000 population and separates caseloads into mandatory and discretionary categories. The number of filings ranged from a low of 283 in Wyoming to a high of 32,273 in California. When adjusted for population, Louisiana reported a high of 294 appeals for 100,000 population compared to 38 appeals per 100,000 population in North Carolina.

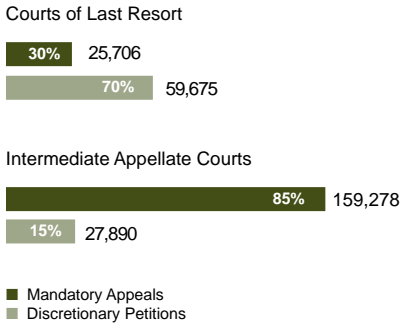
State laws vary on the use of mandatory appeals. West Virginia and New Hampshire do not have mandatory appeals, while seven states reported only mandatory appeals.

Total Appellate Court Filings, 2001

	Appeals per 100,000 Population	Total Appeals	Percent Mandatory	Percent Discretionary	Population Rank
States with an Intermediate Appellate Court					
Louisiana	294	13,117	30%	70%	22
Oregon	154	5,341	83	17	28
Florida	143	23,379	83	17	4
Puerto Rico	132	5,028	30	70	27
Pennsylvania	126	15,472	82	18	6
Alaska	125	794	71	29	48
New Jersey	124	10,509	73	27	9
Ohio	115	13,044	88	12	7
Kansas	103	2,778	68	32	33
Texas	103	21,870	85	15	2
Illinois	99	12,411	81	19	5
Kentucky	97	3,924	78	22	25
Nebraska	95	1,633	87	13	39
Michigan	94	9,366	44	56	8
California	94	32,273	46	54	1
Washington	93	5,591	68	32	15
Hawaii	92	1,124	94	6	43
Idaho	91	1,208	85	15	40
Alabama	90	4,005	100	0	23
Virginia	89	6,400	11	89	12
Arizona	89	4,711	76	24	20
New York	86	16,419	74	26	3
Wisconsin	86	4,664	74	26	18
Colorado	84	3,702	65	35	24
Missouri	82	4,613	84	16	17
Arkansas	82	2,200	71	29	34
New Mexico	81	1,488	60	40	37
Iowa	71	2,074	100	0	31
South Carolina	69	2,784	63	37	26
Tennessee	66	3,806	65	35	16
Georgia	62	5,169	69	31	10
Minnesota	61	3,049	74	26	21
Maryland	61	3,289	65	35	19
Utah	56	1,262	100	0	35
Massachusetts	55	3,496	57	43	13
Indiana	52	3,163	75	25	14
Connecticut	47	1,614	73	27	30
Mississippi	43	1,225	100	0	32
North Carolina	38	3,108	55	45	11
States without an Intermediate Appellate Court					
District of Columbia	290	1,659	97	3	51
West Virginia	147	2,650	0	100	38
Vermont	101	618	96	4	50
Montana	101	909	62	38	45
Nevada	86	1,803	100	0	36
Delaware	73	582	100	0	46
South Dakota	65	494	88	12	47
Rhode Island	62	654	52	48	44
New Hampshire	61	766	0	100	42
Wyoming	57	283	100	0	52
Maine	56	721	73	27	41
North Dakota	48	307	93	7	49

Notes: Oklahoma was unable to provide data for 2001 and is not included. States in bold are the nation's 10 most populous.

Total Appellate Caseloads, 2001



Mandatory cases in intermediate appellate courts constitute the largest share of state appellate caseloads

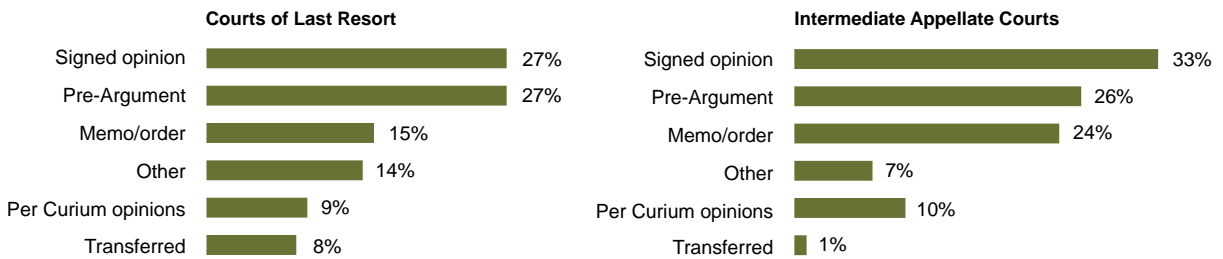
Intermediate appellate courts provide first-level review, while courts of last resort are the final arbiters of disputes. Because of this structure, the intermediate appellate courts handle the majority of appealed cases (IACs handled 69 percent of the total appellate caseload in 2001). In the 11 states (and the District of Columbia) that are without an intermediate appellate court, a state supreme court provides both first and final level review.

The majority of cases filed with the nation's state appellate courts in 2001 were mandatory appeals cases that the courts are required to hear. Specifically, 68 percent of the state appellate caseload consisted of mandatory cases while the remaining 32 percent of the caseload consisted of discretionary appeals that the court decides whether to hear. While the intermediate appellate courts are overwhelmingly likely to hear mandatory cases (85 percent), the work of a state supreme court is primarily discretionary (70 percent).

The most common dispositions are signed opinions and pre-argument dismissals

IACs and COLRs commonly dispose of cases by signed opinion and pre-argument dismissals. Opinions typically include statements of fact, points of law, rationale, and dicta, while a pre-argument dismissal is based on a review of briefs rather than oral arguments. A third common disposition is the memorandum/order, which is a simple order based on a unanimous opinion.

Manner of Disposition, 2001



Manner of Disposition in 23 Courts of Last Resort and 15 Intermediate Appellate Courts, 2001

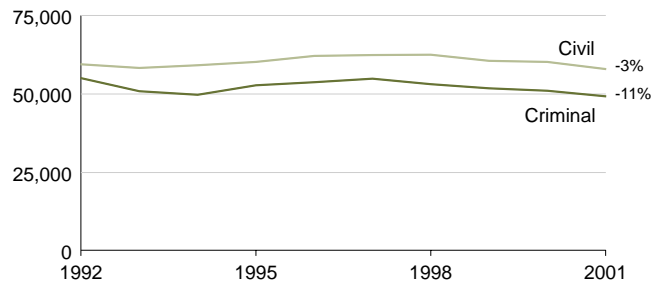
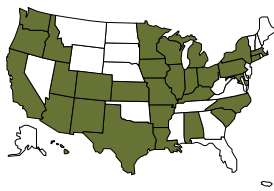
State	Number of Justices	Total Dispositions	Opinions		Non-Opinion Dispositions			
			Signed	Per Curium	Memos/Orders	Pre-Argument	Transferred	Other
Courts of Last Resort								
Iowa	8	2,404	187	16	230	773	1,068	130
District of Columbia	9	2,270	779	502	989			
Ohio	7	2,217	124	324		1,412		357
Indiana	5	1,071	183	25	67	719		77
New York	7	1,062	100	6	39	412		505
Georgia	7	947	403		10	196	133	205
Puerto Rico	7	903	868	14	21			
Mississippi	9	886	331			319		236
Rhode Island	5	721	96	96	81	211	81	156
Maine	7	657	181	2	474			
Louisiana	7	651	112	174	182	87	81	15
Idaho	5	626	127			248		251
Vermont	5	580	64	86	223	176		31
Utah	5	445	112		45	69		219
Maryland	7	389	124	13	48	23		181
Texas Ct. of Crim. Appeals	9	365	120	238		7		
Virginia	7	308	150		110	44		4
Massachusetts	7	295	199					96
Wyoming	5	271	149	1	121			
Minnesota	7	191	176	8	7			
North Carolina	7	167	40	38		74		15
Texas Supreme Court	9	145	110	29		4	2	
New Mexico	5	81	33	7	20	8		13
Intermediate Appellate Courts								
Ohio	68	11,150	7,133			3,763		254
New Jersey	32	7,354	421	3,670	243	3,020		
Michigan	28	5,369	178	86	3,185	1,856		64
Wisconsin	16	3,519	822	576	891			1,230
Georgia	12	3,315	1,313	1	1,062	624	104	211
Kentucky	14	2,963	1,814		1,149			
Alabama Ct. of Crim. Appeals	5	2,688	148		1,594	574		372
Massachusetts	22	2,454	262		773	579	89	751
Colorado	16	2,414	266		1,348	796	4	
Minnesota	16	2,235	1,445		61	609		120
Alabama Ct. of Civ. Appeals	5	1,286	359		489	355	83	
Iowa	9	863	797	44		20		2
Utah	7	762	109	143	161	247		102
Idaho	3	588	195	134	250	8		1
Mississippi	10	567	548			19		

■ Intermediate Appellate Courts

Mandatory civil and criminal appeals in IACs declined in 2001

In 2001, the number of mandatory criminal appeals in 32 IACs reached its lowest point (49,265) since 1992—an 11 percent decline. Mandatory civil appeals also declined to their lowest point in 2001 (57,947), representing a 3 percent decline from 1992 to 2001.

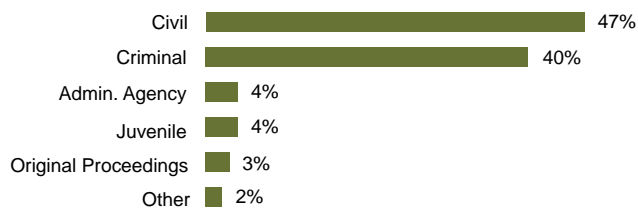
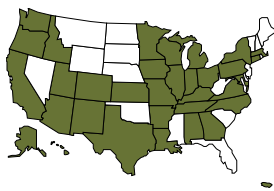
Mandatory Civil and Criminal Appeals in 32 Intermediate Appellate Courts, 1992-2001



Civil cases account for almost half of mandatory appeals in IACs

Civil cases make up almost half (47 percent) of mandatory appeals in IACs, with criminal cases comprising another 40 percent of the caseload. Other types of mandatory appeals include administrative agency, juvenile, and original proceedings.

Composition of Mandatory Appeals in 38 Intermediate Appellate Courts, 2001



The majority of intermediate appellate courts are keeping up with their incoming caseloads

One measure of whether an appellate court is keeping up with its caseload is its clearance rate. A clearance rate is the number of appeals resolved by a court opinion or a dismissal in a given year divided by the number of filings in the same year. A rate below 100 percent indicates that fewer cases are disposed of than are filed in that year, possibly contributing to a backlog.

Clearance rates for intermediate appellate courts in 25 states for 2001 show that two-thirds (17) have combined civil and criminal clearance rates greater than 100 percent, with some variation in civil and criminal clearance rates. These figures would likely indicate a decrease in the pending caseloads in those states.

Civil and Criminal Clearance Rates for Mandatory Appeals in IACs in 25 States, 2001

State	Clearance Rates		
	Civil	Criminal	Combined
Texas	115%	140%	128%
California	138	119	128
Louisiana	121	132	124
New York ¹	116	113	116
Arkansas	111	116	113
Connecticut	110	102	108
Kentucky	115	95	108
Arizona	104	109	107
Puerto Rico	106	114	107
Washington	112	101	107
Indiana	103	108	106
Missouri	105	108	106
Idaho	172	99	105
Wisconsin	106	99	103
Michigan	102	101	102
Ohio	101	102	102
Pennsylvania ²	102	101	101
Alabama	99	99	99
Hawaii	78	110	99
Georgia	99	98	99
Massachusetts	102	95	98
Minnesota	102	89	97
Maryland	93	95	94
Illinois	98	87	93
Iowa	78	84	80

¹ Includes only the New York Appellate Terms of the Supreme Court

² Includes only the Pennsylvania Superior Court

About half of the IACs reported an increase in the percentage of mandatory criminal appeals

Of the 27 states reporting civil and criminal data from their IACs, 13 reported an increase in the number of mandatory criminal appeals from 1992 to 2001. North Carolina reported the largest increase (59 percent), while Michigan reported a decrease of 80 percent since 1992. Two states, Kentucky and Illinois, reported no change. The remaining 12 states reported a decline. In comparison, only nine states reported an increase in mandatory civil appeals filed during the same 10-year period.

Percent Change in Mandatory Civil and Criminal Appeals Filed in Intermediate Appellate Courts in 27 States, 1992–2001

State	Percent Change 1992-2001	
	Criminal Appeals	Civil Appeals
North Carolina	59%	- 3%
Colorado	58	-21
Minnesota	54	-17
Kansas	52	8
Pennsylvania	33	-36
Wisconsin	32	-7
Missouri	28	-8
Massachusetts	27	-27
New Mexico	21	-5
Ohio	19	-19
Arkansas	16	5
Connecticut	15	-5
Alabama	12	76
Kentucky	0	-13
Illinois	0	4
Louisiana	-1	-13
Indiana	-3	-13
Oregon	-6	20
Utah	-8	-38
California	-8	-7
Texas	-9	1
Washington	-13	4
Maryland	-25	21
Hawaii	-35	-19
New York	-41	10
Arizona	-56	-3
Michigan	-80	-22

■ Courts of Last Resort

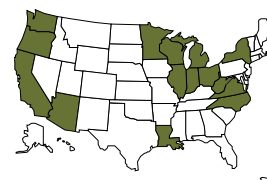
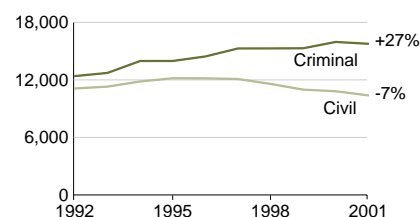
Discretionary civil and criminal petitions in COLRs declined in 2001

Courts of last resort in 15 states were able to provide filing data for discretionary civil and criminal petitions from 1992 to 2001. The number of discretionary criminal petitions in those states increased annually until 2000, when the trend experienced a 1 percent downturn. Nonetheless, for the 10-year period from 1992 to 2001, the number of discretionary criminal petitions increased 27 percent.

The number of discretionary civil petitions in 15 courts of last resort reached its peak in 1995 (12,172). Since then, filings have declined annually. In 2001, there were 10,383 discretionary civil petitions filed in COLRs, a 7 percent decline from 1992.

The 15 COLRs providing data for discretionary petitions since 1992 vary considerably. In North Carolina, for example, discretionary criminal and civil petitions increased 124 percent and 20 percent, respectively. This can be contrasted to Ohio, which reported a decline of 31 percent in discretionary criminal petitions and a drop of 23 percent in discretionary civil petitions. Only three of the 15 COLRs experienced a net decline in criminal petitions filed over the 10 years examined here, whereas two-thirds of the courts saw their civil petition caseloads fall.

Discretionary Criminal and Civil Petitions in 15 Courts of Last Resort, 1992-2001



Percent Change in Discretionary Criminal and Civil Petitions in 15 Courts of Last Resort, 1992-2001

State	Percent Change 1992-2001	
	Criminal Appeals	Civil Appeals
North Carolina	124%	20%
California	100	- 7
Virginia	85	-14
Indiana	70	-14
Wisconsin	58	20
Illinois	37	- 3
Minnesota	32	-21
Washington	14	30
Arizona	13	- 2
West Virginia	13	-14
Louisiana	4	5
Michigan	4	-22
New York	- 2	7
Oregon	-13	-40
Ohio	-31	-23

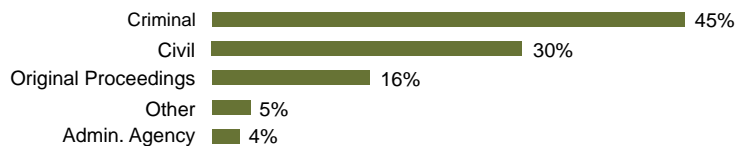
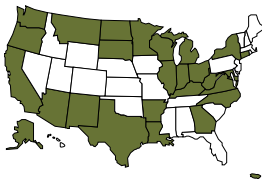
Criminal cases comprise 45 percent of the discretionary petitions in COLRs

Unlike appeals at the intermediate appellate court level where 85 percent of the caseload was comprised of mandatory appeals, the majority of appeals in courts of last resort were discretionary petitions (70 percent). A discretionary petition does not guarantee an appellant that his or her case will be accepted for review, and the focus of a discretionary petition is on questions of law, not of fact. Most of these appeals are based on disputes over the quantum of evidence and the way in which facts were ascertained.

Criminal defendants and civil litigants often appeal alleging some type of trial court error (e.g., insufficient evidence, ineffective counsel, or misapplication of the law). Less common appeals are granted as direct challenges to administrative agency hearings, applications for writs or other original proceedings, and other matters.

The following graph displays the composition of discretionary petitions in 28 courts of last resort. Three-quarters of the petitions filed in these COLRs were either criminal (45 percent) or civil (30 percent) appeals. Sixteen percent of the caseloads were comprised of original proceedings, and the remaining 9 percent of appeals were from administrative agency and juvenile proceedings or other matters (e.g., bar and judicial disciplinary cases).

Composition of Discretionary Petitions in 28 COLRs, 2001



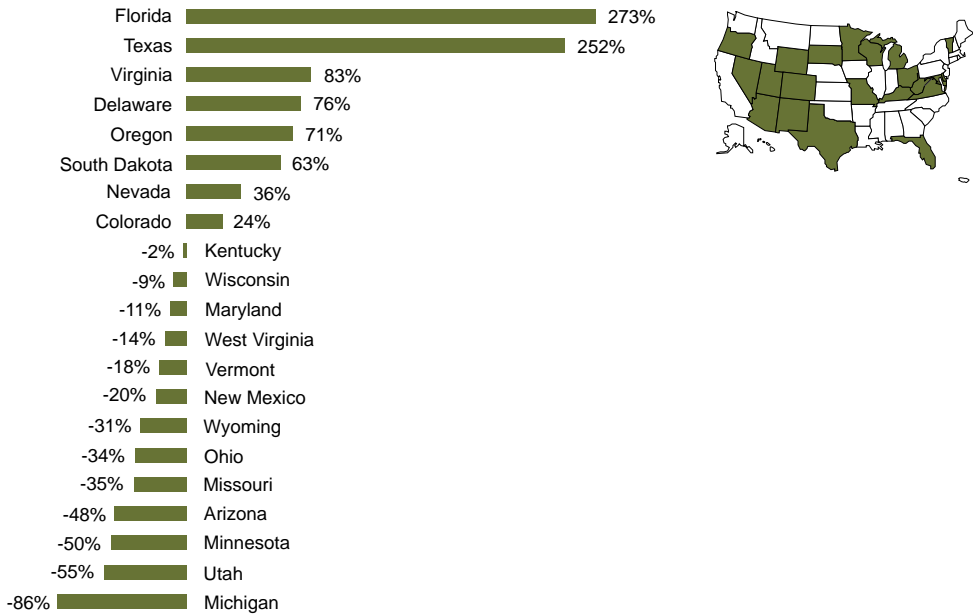
The number of applications for writs and original proceedings has increased in COLRs

The courts of last resort hear remedial writs and other original proceedings. Most of these cases involve criminal matters filed by state prisoners, including applications for writs of habeas corpus, mandamus, and prohibition. However, they also can include civil applications for writs such as those involving election disputes or tax review.

Data regarding the filing of writs and original proceedings were available for 21 courts of last resort for the years 1992 through 2001. Of these 21 states, original proceedings increased in just 8 states. However, the three COLRs with the largest percentage increase—Florida (273 percent), Texas (252 percent), and Virginia (83 percent)—also have the three highest caseloads, thereby creating a 51 percent increase in the number of these cases filed over the period. These states also lead the nation in death penalty cases, which may play some role in the large increases.

Thirteen states saw a reduction in their caseload, from -2 percent in Kentucky to -86 percent in Michigan. Yet, despite the fact that five more states reported a decrease in original proceeding filings, the affect of large caseloads in Florida and Texas generated an average increase of 22 percent for the 21 states listed.

Percent Change in Original Proceedings in 21 Courts of Last Resort, 1992 to 2001



About 7 percent of discretionary petitions are granted in COLRs

Discretionary petitions submitted to appellate courts for review are those not mandated by statute to be heard by the bench. The table below shows that in 2001 there were over 25,000 discretionary petitions filed in 12 COLRs. Yet, fewer than 2,000 (7 percent) were granted. Of these 12 COLRs, Arkansas granted discretionary petitions most often (27 percent). The Supreme Court of California, which accounted for more than one-third of the petitions filed among these 12 courts, granted petitions in only 1 percent of filings.

Discretionary Petitions Granted in 12 Courts of Last Resort, 2001

State	Number of Petitions Filed	Number of Petitions Granted	Percent of Petitions Granted		
			Total	Civil	Criminal
Arkansas	477	130	27%	20%	34%
Maryland	700	126	18	22	13
West Virginia	2,650	451	17	2	14
Minnesota	691	89	13	16	11
Connecticut	442	50	11	11	19
Virginia	2,901	308	11	25	4
Louisiana	3,230	290	9	12	6
Ohio	1,609	121	8	10	3
New Mexico	531	32	6	3	4
North Carolina	634	36	6	9	3
Illinois	2,325	125	5	8	4
California	8,860	85	1	3	1
Total	25,050	1,843	7	10	5