

Joint Legislative Audit and Review Commission

The Virginia General Assembly

Interim Report:

**Status of Part-Time  
Commonwealth's  
Attorneys**

**INTERIM REPORT OF THE  
JOINT LEGISLATIVE AUDIT  
AND REVIEW COMMISSION ON**

# **Status of Part-Time Commonwealth's Attorneys**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



## **HOUSE DOCUMENT NO. 49**

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## Preface

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This report is the first in a series on workload standards and staffing for constitutional officers in Virginia. The review of constitutional officer workload and staffing was required by Item 13 of the 1988 Appropriations Act. A specific review of the status of Commonwealth's attorneys was required by Senate Joint Resolution 55, and also referenced in Item 13 of the Appropriations Act. This interim report addresses the issue of part-time Commonwealth's attorney status.

The part-time status of Commonwealth's attorneys has been a subject of concern for a variety of reasons. Questions have been raised about the adequacy of a part-time position in meeting the needs of prosecution. There are also concerns about the impacts of private practice work on part-time Commonwealth's attorneys, and the extent to which such work leads to difficulties in the management of time and conflicts of interest.

JLARC staff surveys of Commonwealth's attorneys and circuit court judges revealed considerable divergence of opinion on these issues. By itself, this information does not demonstrate the need for either part-time or full-time status in all localities. JLARC staff used a statistical analysis, however, to assess the need for full-time status based on a number of work indicators. JLARC staff have identified in this report the part-time offices that are estimated to have the hours of work necessary to justify full-time status. The findings in this interim report are preliminary, however, and additional research on the status of part-time Commonwealth's attorneys is planned for the final report.

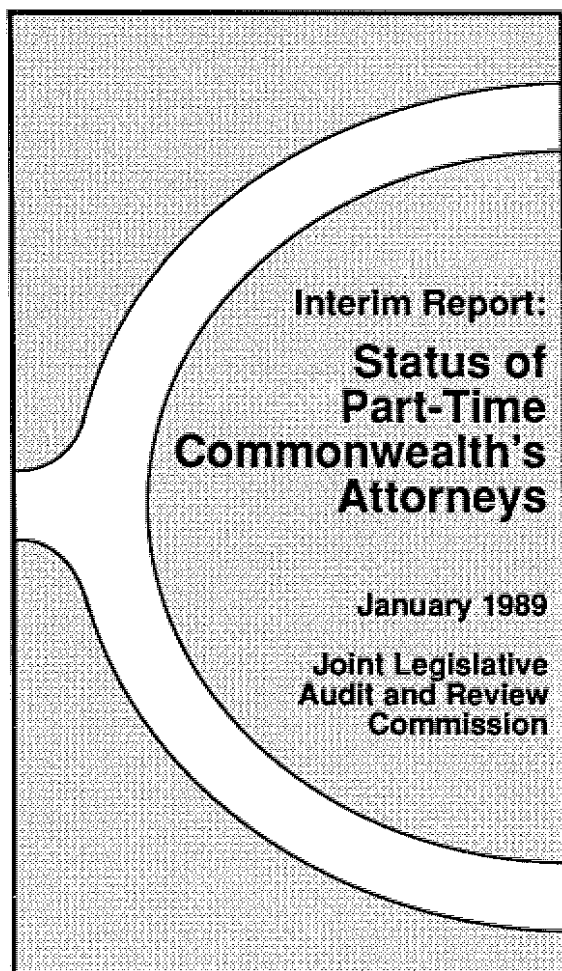
I would like to express our appreciation for the cooperation and assistance extended to us by Virginia's Commonwealth's attorneys, the Commonwealth's Attorneys' Services and Training Council, the Virginia Association of Commonwealth's Attorneys, circuit court judges, and the staffs of the Senate Finance Committee, the House Appropriations Committee, and the Compensation Board.



Philip A. Leone  
Director

January 23, 1989

# JLARC Report Summary



Commonwealth's attorneys are one of five locally-elected constitutional offices in Virginia. Commonwealth's attorneys represent the State in the prosecution of cases in juvenile and domestic relations courts, general district courts, circuit courts, and the court of appeals.

There are 121 Commonwealth's attorneys in Virginia. Currently, 73 Commonwealth's attorneys (60 percent) are compensated on a part-time basis for their work; 48 (40 percent) are compensated on a full-time basis.

Senate Joint Resolution No. 55 of the 1988 General Assembly directed JLARC

to study the part-time nature of Commonwealth's attorneys. In addition, the resolution was referenced by Item 13 of the 1988 Appropriation Act, which requires a broader JLARC study of workload standards and funding for all five constitutional officers.

This interim report provides a preliminary assessment of part-time Commonwealth's attorney status. It is the first of several reports on workload standards for constitutional officers.

## **National Studies Recommend Full-Time Status**

In preparing this report, JLARC staff reviewed standards and guidelines from national professional associations related to full-time or part-time status of prosecutors. This review indicated that the American Bar Association, the National Association of Attorneys General, the National Advisory Commission on Criminal Justice Standards and Goals, and the National District Attorneys Association have adopted standards or recommendations that prosecutorial services should be performed on a full-time basis.

## **Status In Virginia Should Be Determined by Attorney Workload**

JLARC staff used information from three surveys to examine the current concerns about part-time status of Commonwealth's attorneys in Virginia. The surveys were sent to all part-time Commonwealth's attorneys, all full-time Commonwealth's attorneys, and circuit court judges who presided over courts regularly attended by at least one part-time Commonwealth's attorney. The survey questions addressed the following issues: relative experience and qualifications of part-time Commonwealth's attorneys; work effort expended

by part-time Commonwealth's attorneys; the quality of prosecutorial work performed on a part-time basis; the impact of private practice work on the ability of part-time Commonwealth's attorneys to serve the Commonwealth; and the extent to which conflicts of interest are a concern.

The information obtained from the surveys was useful in understanding the concerns of Commonwealth's attorneys and circuit court judges. It also provided an important overview of the current workload in Commonwealth's attorney offices.

The survey responses revealed considerable divergence of opinion. The information was insufficient to demonstrate the need for either part-time or full-time status in all localities.

Because the survey data were not conclusive, analysis of additional factors was required. Through an examination of workload data for Commonwealth's attorneys and their staff, the need for full-time status was assessed further.

### **Population and Crime Rates Can Be Used to Assess Full-Time Need**

JLARC staff tested several factors through a regression analysis for their ability to explain the total attorney hours worked in part-time and full-time Commonwealth's attorney offices. The regression analysis indicated that the two best indicators of

total attorney hours were population and crime rates. Of the two factors, population had the greater effect.

Based on the relationships found between population, crime rates, and total attorney hours, estimates of the hours of expected attorney work could be calculated for each office in Virginia. For this interim report, an assumption was made that assignments and hours worked by assistant attorneys were appropriate.

Next, assistant Commonwealth's attorney hours were subtracted from the total attorney hours needed. The remainder represented an estimate of Commonwealth's attorney hours needed, assuming current assignments and levels of work by assistants. JLARC staff were then able to identify the part-time offices that were estimated to have the hours of work needed to justify full-time status.

The findings of this report are preliminary, however. There are additional issues that must be addressed in completion of the final report. These activities include: further testing of variables and additional refinements to the "total attorney hour" model; review of workload standards and court coverage needs for Commonwealth's attorney offices; and an examination of ways that changes to part-time status could be implemented, and their impacts.

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## I. Introduction

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There are five locally-elected constitutional offices in Virginia: Commonwealth's attorneys, clerks of courts, sheriffs, commissioners of revenue, and treasurers. The Commonwealth's attorneys represent the State in the prosecution of cases in various courts.

The *Code of Virginia* requires Commonwealth's attorneys to prosecute felonies, and also states that Commonwealth's attorneys may at their discretion prosecute certain misdemeanors. Commonwealth's attorneys perform other duties, including: the provision of legal advice or assistance to local government officials and State agencies; attendance to citizen complaints and concerns; and in some cases, the prosecution of violations of local ordinances.

There are 121 Commonwealth's attorneys in Virginia. Seventy-three Commonwealth's attorneys (60 percent) are currently considered part-time; 48 (40 percent) are considered full-time. Part-time status means that: (1) the Commonwealth's attorney is paid a lower salary, on the assumption that fewer hours of work are required, and (2) the Commonwealth's attorney is allowed to engage in private practice work.

Senate Joint Resolution No. 55 of the 1988 General Assembly (see Appendix) directed JLARC to study the part-time status that applies to many of the Commonwealth's attorneys in Virginia. The mandate states that the JLARC study "shall include, but not be limited to" a review of the "actual effort expended by part-time Commonwealth's attorneys"; a review of factors such as population and workload "which should be considered for the purpose of designating Commonwealth's attorneys as part-time"; and a review of the impact of State correctional facilities on the workload of part-time Commonwealth's attorneys.

### **Overview of Part-Time Status in Virginia**

Traditionally in Virginia, Commonwealth's attorneys have served on a part-time basis. An amendment to the *Code of Virginia* effective January 1, 1976, required for the first time that Commonwealth's attorneys in cities with populations greater than 90,000 serve on a full-time basis.

Since the time of that amendment, the part-time status of Commonwealth's attorneys has been the subject of legislative attention. The 1976 General Assembly, for example, directed the Virginia Advisory Legislative Council to study further the need for full-time Commonwealth's attorneys. The Council reported:



- a philosophical view that Commonwealth's attorneys should be full-time;
- a conclusion that evidence persuasively indicated that trial work was "substantially more professional and successful" in the cities with over 90,000 population with full-time Commonwealth's attorneys and assistants;
- a belief that "economical, traditional and political" factors prevented a recommendation that all Commonwealth's attorneys become full-time at once;
- a recommendation that Commonwealth's attorneys devote full-time to their duties in cities and counties with populations greater than 35,000, as a "first step" toward the goal of achieving a system of full-time Commonwealth's attorneys;
- a suggestion that in smaller counties without full-time workloads, Commonwealth's attorneys could be shared by more than one county, pending the resolution of a constitutional issue. (The constitutional issue pertained to whether a locality could share some but not all constitutional officers.)

The Virginia Advisory Legislative Council's recommendation of a threshold of 35,000 population was enacted by the 1977 General Assembly, and became effective in 1980. The same legislation also provided that in cities with populations between 23,000 and 35,000, full-time status could be provided if the city council and the Compensation Board concurred.

In 1986, the General Assembly lowered the threshold from 23,000 to 17,000 for cities, if the city council and the Compensation Board concurred. The threshold making full-time status mandatory in counties and cities (35,000) was not changed. Current *Code* provisions (§15.1-50.1 and 15.1-821) require that:

- Commonwealth's attorneys "shall devote full-time to their duties, and shall not engage in the private practice of law" if the population of the locality is greater than 35,000; and
- in cities with populations of more than 17,000 and less than 35,000, Commonwealth's attorneys shall devote full-time to their duties, and not engage in private practice, if the local city council and the State Compensation Board concur on this full-time service.

Table 1 shows the current status of Commonwealth's attorneys in Virginia. The upper portion of the table shows the State's full-time Commonwealth's attorney offices — 48 Commonwealth's attorneys serving 58 localities. The lower portion of the table shows the State's part-time Commonwealth's attorneys — 73 Commonwealth's attorneys serving 78 localities.

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**Table 1**

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**Current Status of Commonwealth's Attorneys**

Counties with Full-time Commonwealth's Attorneys

Albemarle	Chesterfield	Hanover	Montgomery	Spotsylvania
Augusta	Fauquier	Henrico	Pittsylvania	Stafford
Buchanan	Franklin	Henry	Pulaski	Tazewell
Campbell	Frederick	Loudoun	Roanoke	Washington

Cities with Full-time Commonwealth's Attorneys

Alexandria	Danville	Martinsville	Richmond
Charlottesville	Fredericksburg	Newport News	Roanoke
Chesapeake	Hampton	Norfolk	Salem
Colonial Heights	Hopewell	Petersburg	Suffolk
	Lynchburg	Portsmouth	Virginia Beach

Counties & Cities Where One Full-time  
Commonwealth's Attorney Serves Both

Arlington County/Falls Church City	Prince William County/Cities of Manassas & Manassas Park
Bedford County/Bedford City	Rockingham County/Harrisonburg
Fairfax County/Fairfax City	Wise County/Norton
Halifax County/South Boston	York County/Poquoson
James City County/Williamsburg	

Counties with Part-time Commonwealth's Attorneys

Accomack	Clarke	Greene	Mecklenburg	Prince George
Amelia	Craig	Highland	Middlesex	Rappahannock
Amherst	Culpeper	Isle of Wight	Nelson	Richmond
Appomattox	Cumberland	King George	New Kent	Russell
Bath	Dickenson	King & Queen	Northampton	Scott
Bland	Dinwiddie	King William	Northumberland	Shenandoah
Botetourt	Essex	Lancaster	Nottoway	Smyth
Brunswick	Floyd	Lee	Orange	Surry
Buckingham	Fluvanna	Louisa	Page	Sussex
Caroline	Giles	Lunenburg	Patrick	Warren
Charles City	Gloucester	Madison	Powhatan	Westmoreland
Charlotte	Goochland	Mathews	Prince Edward	Wythe

Cities with Part-time Commonwealth's Attorneys

Bristol	Clifton Forge	Staunton	Winchester
Buena Vista	Radford	Waynesboro	

Counties & Cities Where One Part-time Commonwealth's  
Attorney Serves Both

Alleghany County/Covington	Greensville County/Emporia
Carroll County/part of Galax*	Rockbridge County/Lexington
Grayson County/part of Galax*	Southampton County/Franklin City

\*Galax City is split between two Commonwealth's attorneys.

Source: Compensation Board data, FY 1988.

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## **National Context: Full-Time and Part-Time Prosecution**

JLARC staff reviewed national professional association standards and guidelines pertaining to the full-time status of prosecutors. The staff also conducted a phone survey of other states, to compare the status of their prosecutors in local courts with those in Virginia.

*Professional Guidelines.* Professional standards generally recommend that prosecution work be performed on a full-time basis. The American Bar Association stated in its 1971 report, "Standards Relating to the Prosecution Function and the Defense Function," that prosecutors should be full-time (Standard 2.3b). Also in 1971, the National Association of Attorneys General adopted a recommendation that "local prosecutorial services should be organized in districts sufficiently large to require full-time prosecutors, with adequate staff."

Similarly, in 1973 the National Advisory Commission on Criminal Justice Standards and Goals said that the jurisdictions covered by prosecutors "should be designed so that population, caseload, and other relevant factors warrant at least one full-time prosecutor." Also, the National District Attorneys Association's National Prosecution Standards (1977) stated that prosecutors should be full-time (Standard 1.3), and that prosecutors should "neither maintain nor profit from a private legal practice."

There are several reasons why the standards recommend full-time status. First is the view that part-time prosecutors may not have the time or the incentive to devote enough energy and attention to official duties. The compensation levels that are provided to prosecutors for their prosecutorial services are usually fixed, while the financial rewards of private practice vary based on the extent of the work performed. It is argued that this situation gives part-time prosecutors more incentive to devote time to private practice. Other reasons that are given in recommending full-time status include: part-time prosecutors may have conflicts of interest, or appearances of conflicts, between their prosecutorial and private practice work; the complexity of criminal law requires full-time concentration; and full-time status would lead to increased professionalism in the position.

The national studies of prosecution work also recognize why full-time status is difficult to achieve in many states. There may often be a lack of workload in small population areas. Also, part-time prosecutors may desire to remain part-time, because private practice affords opportunities for substantial additional income. Finally, full-time prosecutors are more expensive for the state or local governments.

*Status of Prosecutors in Other States.* JLARC staff conducted a phone survey of other states to determine the status of other prosecutors. The 19 states that were contacted were in the northeastern and southeastern regions of the country.

Table 2 summarizes the results from this survey effort. For the surveyed states, the table shows:

- whether the state or the localities have the major funding responsibility for the chief prosecutor offices;
- whether the predominate prosecutorial arrangement is one in which each locality in the state has its own chief prosecutor, or one in which the chief prosecutor serves several localities (a “shared” designation);
- the number of prosecutors that serve on a part-time basis;
- the number of prosecutors that serve on a full-time basis.

All of the states contacted have some full-time prosecutors. Four of the states contacted have both full-time and part-time chief prosecutors, and have a greater proportion of part-time chief prosecutors than Virginia has: Kentucky (84 percent part-time); West Virginia (82 percent part-time); Pennsylvania (78 percent part-time); and Maryland (67 percent part-time). Other states with some part-time prosecutors include New Hampshire, with an equal number of part-time and full-time chief prosecutors; and Vermont, with two part-time and 12 full-time chief prosecutors.

Ten of the states contacted have only full-time prosecutors: Maine, Massachusetts, Connecticut, New Jersey, Tennessee, North Carolina, South Carolina, Georgia, Alabama, and Florida. Eight of these ten states have arrangements in which chief prosecutors are shared by some localities.

### **Study Approach**

The primary focus of the JLARC review was the part-time status of Commonwealth’s attorneys in Virginia. Two major analyses were conducted as a part of the review.

The first analysis was an assessment of responses to three separate surveys developed and administered by JLARC staff. Surveys were sent to all part-time Commonwealth’s attorneys, all full-time Commonwealth’s attorneys, and all circuit court judges who sit in circuits with at least one part-time Commonwealth’s attorney. The surveys contained questions about the issue of part-time versus full-time status.

The second effort was a regression analysis. This analysis was used to assess the need for full-time status based on estimated attorney workload. The regression analysis employed data collected on the JLARC staff surveys of Commonwealth’s attorneys, as well as data from several other sources including: Virginia Supreme Court caseload data, Virginia State Police crime data, University of Virginia Center for Public Service population estimates, and data from other State agencies.

Table 2

## Approaches of Selected States to Handling the State Prosecution of Cases in Local Courts

### Northeastern States

<u>State</u>	<u>Funding Responsibility</u>	<u>Chief Prosecutors For Each Locality Or Shared</u>	<u>Number Part-Time</u>	<u>Number Full-Time</u>
Maine	State	Shared	0	8
Vermont	State	Locality	2	12
New Hampshire	Local	Locality	5	5
Massachusetts	State-Local	Locality	0	12
Connecticut	State	Shared	0	12
Rhode Island*	—	—	—	—
New York	Local	Locality	NA	NA
Delaware*	—	—	—	—
New Jersey	Local	Locality	0	21
Pennsylvania	Local	Locality	52	15

### Southeastern States

Virginia	State	Locality	73	48
Maryland	Local	Locality	16	8
West Virginia**	Local	Locality	45	10
Kentucky***	State	Shared	47	9
Tennessee	State	Shared	0	30
North Carolina	State	Shared	0	35
South Carolina	State-Local	Shared	0	16
Georgia	State	Shared	0	45
Alabama	State	Shared	0	39
Florida	State-Local	Shared	0	20

\* Prosecution work handled by State's Attorney General office.

\*\* West Virginia's data are estimates for the part-time and full-time numbers.

\*\*\* Data are for Kentucky's Commonwealth's Attorneys, who handle cases at the circuit court level. The positions are full-time where there is a city with population of 20,000 or more within a county. Kentucky also has 120 county attorneys who handle cases below the circuit court level, and all are part-time.

Source: JLARC staff phone survey of other states, 1988.

## **Report Organization**

The first chapter of this report has provided background information about the part-time status of Commonwealth's attorneys in Virginia, the national context for the issue of full-time versus part-time prosecution, and the JLARC study approach.

Chapter II discusses concerns about the appropriateness of part-time status, which were addressed in several JLARC staff surveys. Finally, Chapter III provides a preliminary assessment of the need for full-time status based on Commonwealth's attorney work effort. Chapter III also discusses remaining issues pertaining to part-time status that will be addressed in the final report on workload standards for Commonwealth's attorneys.



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## **II. Assessment of Current Concerns About Part-Time Status**

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Responses to JLARC surveys were used to examine six issues that are related to concerns about the appropriateness of part-time status for Commonwealth's attorneys. These six issues were:

- experience and qualifications,
- work effort expended,
- quality of prosecution,
- impact of private practice,
- conflicts of interest,
- views on desirability of full-time status.

Survey responses in these six areas provided important information for the assessment of the workload of part-time Commonwealth's attorneys. The survey information also pointed to some differences of opinion regarding the need and desirability of full-time status. The survey data, however, was insufficient to demonstrate the need for either part-time or full-time status in all localities.

### **EXPERIENCE AND QUALIFICATIONS**

The first area examined was the experience and qualifications of the part-time Commonwealth's attorneys. The salary levels approved by the General Assembly for part-time Commonwealth's attorneys in FY 1989 range from \$29,568 to \$36,140, depending on locality population. A potential concern with part-time status is that the part-time compensation and status is primarily attractive to less experienced attorneys who use the exposure of the position to enhance their private practice work or their political careers. Some part-time Commonwealth's attorneys who responded to the JLARC survey expressed this concern. However, other part-time Commonwealth's attorneys who supported part-time status argued that the part-time position was more attractive to established, experienced attorneys from the community who could continue their private practices.

To further examine the hypothesis that part-time status is more attractive to less experienced attorneys than full-time status, information related to experience and qualifications was collected from part-time and full-time Commonwealth's attorneys. The data were used to assess the differences between the two groups.

Based on the analysis of the survey data, part-time Commonwealth's attorneys appear to have experience levels and qualifications that are comparable to full-time Commonwealth's attorneys, when measured in terms of years. Part-time at-



torneys are comparable to the full-time attorneys in terms of: (1) the number of years they have been practicing attorneys, (2) the number of years they have served as Commonwealth's attorneys, (3) the percentage of the total group that had prior criminal litigation experience before their elections as Commonwealth's attorneys, and (4) the average number of years of criminal litigation experience prior to their elections as Commonwealth's attorneys (Table 3). In addition, each of the seven full-time Commonwealth's attorneys who reported on the surveys that they had worked on multi-jurisdictional cases with part-time Commonwealth's attorneys stated that the part-time attorneys had the necessary expertise to handle complex cases.

### **WORK EFFORT EXPENDED**

The work effort required by part-time Commonwealth's attorneys to complete their official duties and services was the second area examined to assess the appropriateness of part-time status. An assumption that rests behind part-time status is that the part-time prosecutor can perform the duties of the elected office in less time than a full work week, thus allowing sufficient time for the prosecutor to administer a private practice. However, there is a concern that in some localities, part-time attorneys need to work hours in excess of a part-time position due to the workload of the office.

**Table 3**

### **Experience and Qualifications of Commonwealth's Attorneys**

	<u>Part-time</u>	<u>Full-time</u>
Number of years practicing as an attorney		
Mean	16.2	16.2
Median	14.0	13.3
Number of years serving as Commonwealth's attorney		
Mean	8.9	8.8
Median	6.8	6.8
Percent with criminal litigation background prior to becoming Commonwealth's attorney	100%	98%
Years of criminal litigation experience prior to becoming Commonwealth's attorney		
Mean	6.7	6.9
Median	5.0	5.5

Source: JLARC staff analysis of Commonwealth's attorney surveys.

To assess whether part-time Commonwealth's attorneys work hours in excess of a level appropriate for part-time positions, the attorneys were asked to report the minimum, maximum, and average number of hours they work per week on Commonwealth's attorney duties. The part-time Commonwealth's attorneys were also asked if they believed that the workload of their office justified its designation as a full-time position.

The survey responses were analyzed according to three locality population categories: 0-9,999; 10,000-19,999; and 20,000-34,999. The analysis indicated that as population increased, more average hours per week were worked by the part-time Commonwealth's attorney, and a greater proportion of the part-time Commonwealth's attorneys reported working 40 hours or more per week. Also, as population increased, the proportion of part-time Commonwealth's attorneys indicating that their workload justified a full-time position increased (Table 4).

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**Table 4**

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**Hours Worked by  
Part-Time Commonwealth's Attorneys**

<u>Population Category</u>	<u>Average Hours Per Week</u>	<u>Number Reporting Average of 40 or More Hours Per Week</u>	<u>Number Reporting Workload Justifies Full-time Position</u>
0 - 9,999	24.8	2 of 16 (12.5%)	5 of 16 (31%)
10,000-19,999	29.1	5 of 28 (18.0%)	9 of 27 (33%)
20,000-34,999	35.1	9 of 20 (45.0%)	14 of 20 (70%)

Source: JLARC staff analysis of Commonwealth's attorney surveys.

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As seen in Table 4, most part-time Commonwealth's attorneys in the 0-9,999 and the 10,000-19,999 population groups do not report working full-time hours and indicate that their workload does not justify full-time status. However, the data raise particular concerns about whether those part-time attorneys in the population category of 20,000-34,999, where the attorneys are averaging 35.1 hours of work, are appropriately designated as part-time offices. Forty-five percent of the part-time Commonwealth's attorneys in this group reported that they are already working 40 or more hours per week on Commonwealth's attorney work, even though their positions are considered part-time. Seventy percent of the Commonwealth's attorneys in this group indicated a belief that the workload justifies the designation of a full-time position.

## **QUALITY OF PROSECUTION**

The third area examined to determine the appropriateness of part-time Commonwealth's attorney status was the quality of prosecution provided to the State by the part-time attorneys. Given the demands associated with operating a private law practice and the limited time for Commonwealth's attorney work that is assumed by part-time compensation levels, there is a concern that the quality of the prosecution being provided by part-time attorneys could be hindered by their status. Therefore, survey questions addressed the issue of the quality of prosecution being provided by part-time attorneys.

### **Views of the Part-time Commonwealth's Attorneys**

The surveys of the part-time Commonwealth's attorneys indicated that they have personal concerns about the quality of services they can provide given the time constraints associated with part-time status. The majority of the part-time attorneys expressed either major or minor concerns with having insufficient time to provide the quality of service they would like to provide. A total of 26 part-time attorneys (41 percent) said that they had a "major concern" with the effect of insufficient time on the quality of their services, and 19 attorneys (30 percent) had a "minor concern." Only 16 respondents (25 percent) indicated that the effect of time constraints on the quality of their services was "not a concern."

Also, a larger proportion of the Commonwealth's attorneys from the population category of 20,000-34,999 reported having concerns about time constraints because of the part-time status of their position. Of the 20 part-time attorneys who fall in this population category, 50 percent had a "major concern" with the effect of insufficient time on the quality of their work. Approximately 43 percent of the part-time attorneys in the population category of 10,000-19,999 also expressed a "major concern" about time constraints on the position. By comparison, only 27 percent of the part-time attorneys in the population category of 0-9,999 had a "major concern" about the effect of time on the quality of their work.

### **Views of the Full-time Commonwealth's Attorneys**

Results from the full-time Commonwealth's attorney survey indicate a belief that the quality of the State's prosecution could improve if the part-time positions were changed to full-time positions. A total of 33 full-time attorneys (75 percent) said that a change to full-time positions, with increased compensation, could improve the quality of prosecution. Eleven full-time attorneys (25 percent) did not feel that the change in status could improve quality. Several full-time Commonwealth's attorneys expressing the latter view indicated that the quality of prosecution did not depend on full-time or part-time status, but rather on the quality of the individual who occupied the elected office.

## **Views of the Circuit Court Judges**

In contrast to the quality concerns expressed by full-time and part-time Commonwealth's attorneys, most circuit court judges did not appear to be concerned about the quality of prosecution being provided by the part-time attorneys. The circuit court judges who see part-time Commonwealth's attorneys were asked to rate the effectiveness of the part-time and full-time Commonwealth's attorneys who appear before their courts. Overall, the performance for both groups was rated "very effective" by the circuit court judges (Table 5).

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**Table 5**

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### **Judges' Ratings of Commonwealth's Attorney Effectiveness**

<u>Rating</u>	<u>Percentage of Part-time Commonwealth's Attorneys Rated</u>	<u>Percentage of Full-time Commonwealth's Attorneys Rated</u>
Very Effective	69%	79%
Somewhat Effective	27%	18%
Not Effective	3%	3%

Note: Percentages do not add to 100 percent due to rounding.

Source: JLARC staff analysis of Circuit Court Judges surveys.

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The circuit court judges were also asked if they felt that making the Commonwealth's attorney office full-time could improve the effectiveness of prosecution. The majority of the respondents, 55 percent, said "no", while the remaining 45 percent felt the change to full-time attorneys could improve the effectiveness of prosecution.

## **IMPACT OF PRIVATE PRACTICE**

Part-time Commonwealth's attorneys are permitted by statute to practice law privately. There are no guidelines concerning the number of hours they may work in their private practice relative to the number of hours they devote to official duties. A potential concern is that extensive private practices may sometimes be detrimental to the effectiveness of the State's prosecution. Thus, the part-time Commonwealth's attorneys were surveyed to determine the extent of their private practice work, and to determine what impact, if any, they believed their private practice work had on the operation of their part-time Commonwealth's attorney offices.

## **Views of the Part-time Commonwealth's Attorneys**

Ninety-eight percent of the part-time Commonwealth's attorneys reported having a private practice. These part-time attorneys averaged 24 hours per week of private practice work. Twelve part-time attorneys reported spending 35 hours or more per week in private practice. Thus, it is not surprising that many part-time Commonwealth's attorneys reported some difficulty managing the time requirements of both their private practices and Commonwealth's attorney work. Of the part-time Commonwealth's attorneys with private practices, 89 percent stated that there are occasions when they face difficulties managing the time requirements of both Commonwealth's attorney duties and private practice.

Most part-time Commonwealth's attorneys also reported that they contribute some of their private practice resources to support Commonwealth's attorney work. Ninety-two percent of the part-time attorneys who have private practices reported contributing at least one of the following from their private practice to support the Commonwealth's attorney office:

- occasional staff time or assistance,
- equipment and supplies,
- overhead (rent, utilities, maintenance),
- training, travel and other services.

Part-time attorneys reported spending an average of approximately \$300 per month from their private funds in support of these services.

There were differences of opinion expressed by the part-time Commonwealth's attorneys on the overall impact of private practice work. Some part-time Commonwealth's attorneys stated that private practice work hinders the prosecutorial work of the Commonwealth's attorney, and that a private practice is difficult to maintain. Other part-time Commonwealth's attorneys stated that they do not have trouble giving priority to the Commonwealth's attorney work, and that private practice work is financially rewarding and provides them with job security. Exhibit 1 provides an overview of the part-time Commonwealth's attorney comments concerning the impact of private practice.

## **CONFLICTS OF INTEREST**

The fifth area examined to assess the appropriateness of part-time status was conflicts of interest resulting from the attorneys' private practices and their duties as Commonwealth's attorneys. Although part-time attorneys are allowed to maintain a private practice while serving in their elected position, there continues to be some debate about real or potential conflicts of interest arising from the Commonwealth's attorneys' dual representation roles as prosecutors and defense counsels.

Exhibit 1

## Part-Time Commonwealth's Attorney Responses: Impact of Private Practice

### Arguments Favoring Part-time Status

"The Commonwealth's Attorney position takes precedence. I tell my private clients this up front. When I am too busy, I refer potential clients to other attorneys."

"You work longer hours giving preference to the Commonwealth attorney work."

"I enjoy the diversity of my practice which is allowed by my part-time status."

"This is a small area. If I am full-time, I can't develop a private practice to have when I leave office. In a small, slow growth area, people stay with the same lawyer for years and sometimes generations."

"I make [about] \$100,000/yr. As Commonwealth Attorney, I get \$36,000. That's a lot to expect an experienced attorney to give up!"

### Arguments Favoring Full-time Status

"[Private practice is] not something that can be switched off and on."

"I have known of cases where the pursuit of private practice hampered efficient prosecution."

"[Full-time status] would allow specialization in one field - as opposed to being a jack of all trades."

"I desire to be a full-time Commonwealth's attorney for two reasons: first, I prefer the prosecution of criminal cases to other areas of law; second, my total compensation would increase. My private practice has suffered a great deal from my service as Commonwealth's attorney."

"Because of insufficient salary, part-time Commonwealth's Attorneys are becoming more dependent on their private practice to ensure adequate compensation."

Source: JLARC staff analysis of Commonwealth's attorney surveys.

The Virginia Bar Association addressed the issue of conflicts of interest for part-time Commonwealth's attorneys in legal ethics opinion No. 188 (1982). The Bar concluded that:

*It is improper for a Commonwealth's attorney to defend criminal cases in courts in which he prosecutes or in any federal court in the Commonwealth. It is improper for a Commonwealth's attorney to defend criminal cases in courts where he does not prosecute unless it is clear that there is no possible conflict of interest, real or apparent, and that the prestige of the office of Commonwealth's Attorney is in no way used in defense of the case....*

When determining whether a case contains real or apparent conflicts of interest, the Bar recommends that the part-time attorney take the following factors into consideration:

- the distance between the city/county where the attorney has official duties, and the court in which the defense case is to be tried;
- the nature of the crime which the attorney will be defending, and whether it may be related to actions in the city/county in which the attorney has official duties;
- the identity, activities, and relationships of the defendant;
- the identities, activities, and relationships of witnesses.

Although the Bar Association has provided some guidelines to help the part-time Commonwealth's attorneys deal with real or potential conflicts of interest, the attorneys and judges responding to the JLARC survey had mixed feelings concerning the effect of conflicts on the execution of the official duties of Commonwealth's attorneys.

### **Views of the Part-time Commonwealth's Attorneys**

Survey responses related to conflicts of interest indicate that part-time Commonwealth's attorneys are in fact facing real or potential conflicts. Fifty-four of the 62 responding part-time attorneys report having to be removed in the past year from the prosecution of a State case due to actual or potential conflicts of interest or ethical constraints. These 54 attorneys report that they are excused on average more than five times per year due to concerns about conflicts of interest.

The comments from the part-time Commonwealth's attorneys indicate that there is mixed opinion concerning the impact of conflicts of interest on their ability to fulfill the duties of their offices. Some part-time Commonwealth's attorneys

argue that the extent to which conflicts of interest are a concern has been greatly exaggerated, and that when conflicts occur, judges appoint another attorney to prosecute the case in conflict. On the other hand, other part-time Commonwealth's attorneys reported that there are limited areas of the law that can be practiced without concern for conflicts of interest. These attorneys believe that it is difficult for many part-time Commonwealth's attorneys to establish a private practice when they limit their practices accordingly.

Other data from the survey support the conclusion that it is difficult for many part-time Commonwealth's attorneys to establish a private practice because of either real or potential conflicts of interest or ethical constraints. Of the 63 attorneys responding to the survey, 23 (37 percent) had a "major concern" with this issue, and 21 (33 percent) had a "minor concern" with this issue. Only 18 attorneys (29 percent) said the issue was "not a concern." One attorney reported that the issue was "not applicable" to his situation.

The survey results also found that the respondents who did not have concerns over conflicts of interest, or expressed "minor concerns," worked more hours in private practice than respondents who had "major concerns." The average number of hours in private practice worked by the respondents without these concerns or with "minor concerns" was 27 and 26 hours per week, respectively. The average number of hours worked by those with "major concerns" was 20 hours per week.

### **Views of the Full-time Commonwealth's Attorneys**

Survey results indicate that when part-time Commonwealth's attorneys need to be removed from the prosecution of State cases, the workload of full-time Commonwealth's attorneys may be affected. Twenty-one of the responding full-time attorneys (45 percent) reported having been appointed to replace a part-time attorney due to problems of real or potential conflicts of interest. The majority of these full-time attorneys, 12 respondents, stated that they are appointed to replace a part-time attorney "two to three times" per year.

### **Views of the Circuit Court Judges**

Survey results collected from circuit court judges also indicated that conflicts of interest or ethical concerns sometimes interfere with the ability of part-time Commonwealth's attorneys to prosecute all cases brought before them. Seventy-four percent of the circuit court judges reported having to replace a part-time Commonwealth's attorney one or more times per year due to conflicts of interest or ethical constraints.



## **DESIRABILITY OF FULL-TIME STATUS**

The final area examined to assess the appropriateness of part-time status was the impact of changing part-time Commonwealth's attorneys to full-time positions. For this interim report, the views of attorneys and judges were sought on questions related to the effects of changing from part-time to full-time status for Commonwealth's attorneys. The part-time Commonwealth's attorneys were asked if change to full-time status would be desirable to them, as the current holders of the office. The full-time Commonwealth's attorneys and the circuit court judges were asked to comment on the need for changes from part-time to full-time positions.

### **Views of the Part-time Commonwealth's Attorneys**

Concerns have been raised that some of the part-time Commonwealth's attorneys would not want to be full-time and might subsequently decide not to seek reelection. There is also concern that the office would be less attractive to established, experienced attorneys in the community because they could no longer maintain private practices.

There was diversity in the views of part-time Commonwealth's attorneys concerning the desirability of full-time positions, although the majority of the respondents supported continued part-time status. Thirty-nine Commonwealth's attorneys (62 percent) stated that making the Commonwealth's attorney position full-time in their jurisdiction would make the office "less desirable" to them. On the other hand, 19 Commonwealth's attorneys (30 percent) said the office would be "more desirable" with such a change. Five Commonwealth's attorneys felt that a change in their status would have "no impact" on the desirability of the office to them. A larger proportion of Commonwealth's attorneys in the higher population category of 20,000 - 34,999 indicated that they would find full-time status desirable than in the other population categories (Table 6).

Comments from the part-time Commonwealth's attorneys enumerated various reasons why attorneys would find part-time positions more or less desirable than full-time positions. However, the two primary issues were financial considerations (compensation levels or financial security) and workload. Exhibit 2 provides an overview of some of the comments made by part-time Commonwealth's attorneys concerning the impact that changing to full-time status would have on the desirability of the office.

### **Views of the Full-time Commonwealth's Attorneys**

The full-time Commonwealth's attorneys were somewhat divided on whether all part-time offices should be changed to full-time offices. Twenty-six full-

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**Table 6**

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### **Desirability of Full-time Status**

Survey Question: What impacts would making the Commonwealth's attorney position in your jurisdiction full-time (with a corresponding increase in compensation) have on the desirability of the office to you?

<u>Population</u>	<u>More Desirable</u>	<u>Less Desirable</u>	<u>No Impact</u>
0- 9,999	4	9	2
10,000-19,999	7	19	2
20,000-34,999	<u>8</u>	<u>11</u>	<u>1</u>
	19 (30%)	39 (62%)	5 (8%)

Source: JLARC staff analysis of Commonwealth's attorney surveys.

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time attorneys (56 percent) stated that the position should be full-time in all jurisdictions; but 20 attorneys (44 percent) did not feel the position should be full-time in all jurisdictions. However, those full-time Commonwealth's attorneys who had once served as part-time attorneys were not as divided on their opinions concerning the change to full-time status for all attorneys. Of the 17 attorneys who had once served as a part-time Commonwealth's attorney, 65 percent believed that the Commonwealth's attorney position should be full-time in all jurisdictions.

Full-time Commonwealth's attorneys made several different points in arguing that the position should be full-time:

- Some full-time attorneys had been in part-time offices and felt that the quality of prosecution improved when the offices changed to full-time status.
- Some full-time attorneys felt that it is impossible to do a good job as both a prosecutor and a private practitioner, due to the time demands and need for specialization in prosecutorial work.
- Some full-time attorneys discussed conflicts of interest concerns and the effect they have on part-time prosecutors' abilities to handle all cases that come before their jurisdictions.

The full-time Commonwealth's attorneys who stated that part-time status was appropriate in some instances made arguments such as:

- "[Quality] depends on the ability and dedication of the lawyer. I doubt that the compensation would drastically change the product."

## Part-Time Commonwealth's Attorney Responses: Impacts of Changing to Full-Time Status

### Arguments Favoring Part-time Status

"[Full-time designation] would be [a] waste of taxpayer money and the Commonwealth's time."

"I could not give up my private practice."

"Unless salary was drastically increased, I would not consider a full-time position."

"I would definitely resign."

"... in order to retire with 30 years of service, I must now stand for 2 more elections ... If the position were made full-time, I would be placed in the position of either abandoning my civil practice or to abandon any chance of retirement some 10 years from now ... At 50 years of age, with 21 years of experience I would not like to be placed in a position to make another career choice."

### Arguments Favoring Full-time Status

"Better preparation of cases and better training by us of our police."

"More thorough trial preparation, more investigative participation, more legal research, more education and training of police."

"The time demands of prosecuting and operating a private practice prevent us from always giving adequate attention to General District and Juvenile Court cases. If the office were full-time, then the time spent on private practice could be used in more thoroughly preparing and following up on the many cases prosecuted by this office. Also, it would be much easier to stay current on criminal law which would lead to more effective prosecution."

"The increased compensation from a full-time position would alleviate the demands of private practice and still allow me to support my family."

Source: JLARC staff analysis of Commonwealth's attorney surveys.

- “The taxpayers should not buy a full-time prosecutor for a caseload that doesn’t require it.”

### **Views of the Circuit Court Judges**

The survey responses of the circuit court judges indicate that a majority do not believe that all Commonwealth’s attorney positions should be full-time. Sixty-eight percent of the judges did not believe all Commonwealth’s attorneys in their court should be full-time; 32 percent did believe they all should be full-time.

In supporting continued part-time status, a number of judges stated that there was insufficient work to justify full-time status in some localities. Also, many of the judges said they were pleased with the job that was being done by the part-time Commonwealth’s attorneys in their courts, and that the quality of the work did not depend on the status of the position, but on the quality of the individual elected to the position. However, those who supported the change to full-time status for all Commonwealth’s attorneys stated that part-time status and/or private practice work has interfered with the trial preparation of some part-time Commonwealth’s attorneys, and that full-time status is needed in some jurisdictions to deal with the volume and complexity of cases.

## **CONCLUSION**

The information obtained from the surveys is useful in understanding the concerns of Commonwealth’s attorneys and circuit court judges. It also provides an important overview of the current workload in Commonwealth’s attorney offices. The information is insufficient, however, to demonstrate the need for either part-time or full-time status in all localities. The qualifications and experience levels of part-time and full-time Commonwealth’s attorneys were found to be the same, except insofar as the full-time Commonwealth’s attorneys devote more time daily to prosecutorial duties. The weekly work effort of some part-time Commonwealth’s attorneys was high (a reported average of 35.1 hours per week for those attorneys in the 20,000-34,999 population group), but for others it clearly represented part-time work (a reported average of 24.8 hours for those in the 0-9,999 population group).

Part-time and full-time Commonwealth’s attorneys expressed some concerns about the quality of prosecution that could be provided on a part-time basis, but circuit court judges gave part-time Commonwealth’s attorneys high ratings in terms of effectiveness in prosecution. Conflicts of interest situations and the competition for time that private practice work represents were seen by some of the Commonwealth’s attorneys as problem areas, but there is currently insufficient evidence to indicate that those problems cannot be dealt with effectively under the present part-time system.

Because the data from the surveys did not point conclusively to the need for either part-time or full-time Commonwealth's attorney offices, additional analysis was required. Through an examination of workload data for Commonwealth's attorneys and their staff, the need for full-time status was assessed. In the next chapter, the analysis of workload is discussed.

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### **III. Assessment of Work Effort**

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Based on the assessment of survey responses discussed in Chapter II, the central issue for assessing the need for full-time status is the amount of attorney work effort required in the offices. This chapter examines the issue of work effort in more detail.

Several research steps were performed to analyze the work effort required in Commonwealth's attorney offices. The first step was to construct a preliminary model that could be used to predict the attorney work effort required by each office. The model could be used to represent the prevailing statewide practices in terms of the hours worked in relation to factors that affect workload. The model's estimates of the hours of work required for each office, based on prevailing practices, could be used in determining the status which the State may wish to recognize for funding. Use of estimates from the model is preferable to the use of each office's estimate of the hours worked, because the hours reported for a particular office may be affected by the extent of private practice commitments, the relative efficiency of the office, unusually high or low levels of service, or errors in the individual estimates themselves.

The second step was to take into account the work performed by assistant Commonwealth's attorneys by subtracting assistant Commonwealth's attorney hours from the total attorney time predicted by the model. The resulting figure should indicate the number of Commonwealth's attorney hours required, assuming that assistant assignments and levels of work effort are appropriate. The last step was to categorize the Commonwealth's offices, based on the amount of Commonwealth's attorney time required.

This chapter discusses the development of a model that could be used to predict the attorney work effort required by Commonwealth's attorney offices, the subtraction of assistant Commonwealth's attorney hours to estimate hours of the Commonwealth's attorney, and the use of the estimated Commonwealth's attorneys' hours in assessing part-time status. The chapter also discusses remaining issues pertaining to part-time status that may be considered for the final report.

#### **DEVELOPING A MODEL TO PREDICT TOTAL ATTORNEY WORK EFFORT**

The JLARC staff survey requested that all Commonwealth's attorneys report the number of hours per week that they and their assistants spend on Commonwealth's attorney's duties. From the survey instrument, JLARC staff collected data on the maximum, average, and minimum hours worked per week by the

Commonwealth's attorney and any assistant Commonwealth's attorneys in each office. Average hours worked by the Commonwealth's attorney and assistants were used to measure the total attorney effort expended in the discharge of Commonwealth's attorney duties.

Using correlation and regression analysis, JLARC staff tested how variations in different work-related indicators (independent variables) compared with variations in the total attorney effort measure (dependent variable). The relationships of total attorney effort and eight other variables were examined.

### **Variables Tested for Relationships to Total Attorney Hours**

The variables tested in the regression analyses of total attorney hours were population, court caseload, crime rate, presence of a victim/witness coordinator, presence of a county/city attorney, existence of judicially required duties, presence of Department of Corrections (DOC) facilities, and presence of Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMR&SAS) facilities. The basis for possible inclusion of the variables as well as the results of the correlation and regression analyses are presented below.

***Population.*** As required by the study mandate, JLARC staff examined the effect of population and workload on total attorney hours. Population is currently the criterion that the State uses to distinguish between localities with a part-time Commonwealth's attorney, and localities requiring a full-time Commonwealth's attorney. JLARC staff tested the population variable, hypothesizing a positive relationship: as population increases so do the number of attorney hours per week necessary to fulfill Commonwealth's attorney duties. Higher populations mean potentially more crime, more victims, and more requests for Commonwealth's attorney advice and services.

Correlation and regression analysis confirmed the validity of the use of population as a factor affecting the workload of Commonwealth's attorney offices. Population, with a correlation coefficient ( $r$ ) of .913, correlated highly with total attorney hours, indicating that 83.4 percent of the variation in total attorney hours can be predicted by locality population.

***Caseload.*** Four measures of caseload were also examined. Supreme Court statistics on the number of new charges in 1987 were correlated with total attorney hours. The following groups of new charges were tried in the correlations: (1) felonies, (2) misdemeanors, (3) the sum of felonies plus misdemeanors, and (4) a weighted total for felonies plus misdemeanors (recognizing a difference in effort expended for each type of charge). The hypothesized relationships between these four variables and total attorney hours were positive: the larger the caseload data, the higher the number of hours worked per week to fulfill Commonwealth's attorney duties. The correlation coefficients ( $r$ ) and regression coefficients of determination ( $R^2$ ) are listed in Table 7 for the caseload indicators.

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Table 7

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**Relationship of Variables to Total Attorney Hours:  
Correlation and Regression Results**

	<u>r</u>	<u>R<sup>2</sup></u>
Weighted felony + misdemeanor charges	.898	.807
Felony charges	.893	.798
Felony + misdemeanor charges	.881	.776
Misdemeanor charges	.869	.756

Source: JLARC staff correlation and regression analyses, November 1988. Results based on Supreme Court statistics for 1987 new charges.

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*Crime Rate.* Survey responses and interviews indicated that a crime rate measure should be included as a variable to be tested. Several Commonwealth's attorneys responding to the JLARC staff survey indicated that crime rates should be considered as a factor in assessing the need for full-time status.

Crime rate was hypothesized to correlate positively with total attorney hours. It was hypothesized that with population held constant, the higher the crime rate in an area, the higher the level of effort necessary from the Commonwealth's attorney's office in prosecuting crimes. Data used to create the crime rate variable were taken from the Uniform Crime Reporting (UCR) tabulations by locality for the seven indicator crimes and from the 1987 provisional population figures from the University of Virginia Center for Public Service. The sum of the UCR crimes for each locality was divided by the population. The quotient was multiplied by 1,000 to calculate UCR index crimes per 1,000 population.

The correlation coefficient (r) of .703, and the regression coefficient of determination (R<sup>2</sup>) of .494, substantiated the hypothesized positive relationship between crime rate and total attorney hours.

*Victim/Witness Coordinator & County/City Attorney.* Other variables tested included presence or absence of a victim/witness coordinator or a county/city attorney in the locality. Interviews and pretest surveys suggested that the presence of either of these positions in a locality would relieve the Commonwealth's attorney of duties and therefore lessen workload. The correlations of these variables with total attorney hours indicated positive relationships, with correlation coefficients of .647 and .465 respectively (R<sup>2</sup> values were .419 and .216 respectively). Yet, general survey results also showed cases where existence of these positions added to Commonwealth's attorney workload.



*Judicially Required Duties.* Performance of judicially required duties by the Commonwealth's attorney's office was also tested as a variable. Interviews suggested that duties assigned to Commonwealth's attorneys, outside of the duties mandated in the Code of Virginia, could cause variations in the work effort needed to perform the job.

Correlation analysis showed a weak positive relationship ( $r=.071$ ), and regression showed judicially required duties predicted only one half of one percent of the variation in total attorney hours.

*DOC and DMHMR&SAS Facilities.* Similarly, the presence of DOC or DMHMR&SAS facilities was suggested in the JLARC study mandate, in interviews, and in some survey responses, as a factor affecting Commonwealth's attorney workload. No strong positive relationships, however, were supported by the data. The correlation coefficient for presence of a DOC facility was .08; the coefficient for presence of a DMHMR&SAS facility was .169. Regression analysis credited the DOC and DMHMR&SAS facilities with explaining .07 percent and 2.9 percent of the variation in total attorney hours, respectively.

### **Use of an Equation to Predict Total Attorney Time**

A stepwise regression analysis of the variables indicated that population and crime rate were the strongest predictors. The other variables, when combined with population, showed small regression coefficients, indicating a limited effect on the regression equation. The other variables also predicted insignificant proportions of the variance in total attorney hours. For example, felony caseload was initially included in the stepwise regression since it was the strongest caseload measure. However, population was a stronger predictor of total attorney hours than this measure. Population alone predicted 83.4 percent of the variance in total attorney hours; felony caseload predicted 79.8 percent. When combined, felony caseload improved the predictive power of population by a small amount (one-eighth of a percent).

When crime rate was added to a regression model that already included population, the addition of the crime rate measure explained 2.3 percent of the variation above the 83.4 percent explained by population alone. The six independent variables (besides population and crime rate) explained only 2.2 percent of the remaining unexplained variation in total attorney hours. The stepwise regression indicated that the variances these variables seemed to explain, based on the correlation and regression analyses, were already more fully predicted by population and crime rate. The resulting formula used to estimate total attorney hours for the localities is shown in Exhibit 3.

### **Exhibit 3**

## **Formula for Estimating Total Attorney Hours**

$$\text{LOG(TOTAL ATTY. HOURS)} = -4.419 + .773[\text{LOG(POPULATION)}] + .27[\text{LOG(CRIME RATE)}]$$

Source: JLARC staff regression analysis.

### **Further Analysis of The Model**

The preceding discussion briefly summarized the JLARC staff's efforts to develop a formula for estimating total attorney hours. Development of the JLARC model is ongoing. The final report will provide more detail on the methodology employed in developing the model.

## **SUBTRACTING ASSISTANT COMMONWEALTH'S ATTORNEY HOURS**

Most Commonwealth's attorneys, including many part-time Commonwealth's attorneys, have assistant attorneys in their offices. Assistant Commonwealth's attorneys handle some of the prosecutorial work. Thus, their assignment to an office may reduce the amount of time that the Commonwealth's attorney needs to work. To account for this factor, JLARC staff developed a model of the total attorney hours worked in Commonwealth's attorney offices, instead of a model for the hours worked by only the elected official.

The study mandate, however, directed JLARC staff to study "the part-time nature of Commonwealth's attorneys in localities with populations under 35,000." The mandate directs an evaluation focusing on the Commonwealth's attorneys' "effort expended," and the "determination of the appropriate factors...which should be considered for the purpose of designating Commonwealth's attorneys as part-time."

To satisfy the mandate, JLARC staff estimated the work hours of the elected Commonwealth's attorney in the offices that are currently part-time. To isolate Commonwealth's attorney hours, actual assistant Commonwealth's attorney hours as reported on the surveys were subtracted from the estimated total attorney hours. At this stage in the analysis, and for the purposes of this interim report, the assumption was made that the assignment of assistants and the hours worked by assistants were appropriate.

## **ESTIMATING COMMONWEALTH'S ATTORNEY EFFORT**

After assistant Commonwealth's attorney hours are subtracted from total attorney hours predicted from the regression model, the remainder represents an

estimate of the Commonwealth's attorney time that is needed (assuming prevailing statewide relationships between population, crime rates, and total attorney time). The estimates of Commonwealth's attorney time were used to define two groups of Commonwealth's attorneys: (1) those part-time Commonwealth's attorney offices where the Commonwealth's attorney's effort is estimated at a level of 40 or more hours per week, and (2) those part-time Commonwealth's attorney offices where the estimated Commonwealth's attorney effort is less than 40 hours per week. The analysis and the estimates are considered preliminary, however.

Table 8 presents the 27 part-time Commonwealth's attorney offices where the estimated Commonwealth's attorney time spent on Commonwealth's attorney duties exceeds 40 hours per week. A preliminary finding of the report is that these offices should be considered for full-time status.

Table 9 presents the remaining 46 part-time Commonwealth's attorney offices, where estimated Commonwealth's attorney time is less than 40 hours per week. These offices are also categorized with respect to the predicted total attorney time from the regression model.

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**Table 8**

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### **Offices With Estimated Commonwealth's Attorney Time of 40 Hours or More per Week**

Accomack	Mecklenburg
Alleghany/Covington	Northampton
Amherst	Nottoway
Botetourt	Prince Edward
Bristol	Prince George*
Brunswick	Radford
Caroline	Shenandoah
Carroll/Galax	Smyth
Dinwiddie	Southampton/Franklin
Giles	Staunton
Gloucester	Waynesboro
Grayson/Galax	Westmoreland
Isle of Wight	Winchester
King George	

Estimated additional salary and fringe benefit cost of full-time status for the Commonwealth's attorneys in these offices totals \$760,000.

\*No data yet available. Categorization assumes part-time assistant works an average of 28 hours per week or less.

Source: JLARC regression analysis.

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Table 9

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**Offices With Estimated  
Commonwealth's Attorney Time of Less Than  
40 Hours per Week**

Commonwealth's Attorney Time Less Than 40 Hours, but  
Total Attorney Hours 40 or More

Culpeper	Orange	Scott
Dickenson	Page	Warren
Greensville/Emporia	Patrick	
Lee	Rockbridge/Lexington	
Louisa	Russell	

Total Attorney Hours 25 to 39

Amelia	Fluvanna	Middlesex
Appomattox	Goochland	Nelson
Buckingham	Greene	New Kent
Charlotte	King William	Northumberland
Clarke	Lancaster	Powhatan
Essex	Lunenburg	Sussex
Floyd	Madison	

Total Attorney Hours Less than 25

Bath	Craig	Rappahannock
Bland	Cumberland	Richmond County
Buena Vista	Highland	Surry
Charles City	King and Queen	
Clifton Forge	Mathews	

Source: JLARC regression analysis.

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The offices in the first category in Table 9, where more than 40 hours of total attorney time is estimated, underscore the need for further research pertaining to assistant Commonwealth's attorney assignments and hours. In cases where assistants are needed because the Commonwealth's attorney is part-time (and not for other reasons such as court coverage), the Commonwealth's attorneys in these offices should be considered for full-time status.

The 33 part-time offices in the second and third categories of Table 9, however, seem less likely to require full-time status because Commonwealth's attorney

hours and total attorney hours are estimated at less than 40 hours per week. The primary opportunity for achieving full-time status in some of the smaller localities appears to be through a “shared” arrangement with another locality. Under the Virginia Constitution, shared arrangements are permitted with the consent of the voters in the affected localities.

## **REMAINING ISSUES**

This chapter has presented a preliminary assessment of the need for full-time status for Commonwealth’s attorneys. The findings in this chapter should be considered preliminary. For the final report on workload standards for Commonwealth’s attorneys, a number of issues related to the part-time status of Commonwealth’s attorneys merit further review. These areas include the following:

- further testing of variables and additional refinements to the “total attorney hours” model;
- review of workload standards and court coverage needs for Commonwealth’s attorney offices, in order to further assess how prevailing work effort in Virginia compares to workload standards and Compensation Board assignment of assistants;
- an examination of the advantages and disadvantages of sharing Commonwealth’s attorneys across localities;
- consideration of the data on hours worked by Commonwealth’s attorneys, to help examine the equity of part-time compensation;
- further analysis of the impact of correctional facilities on the workload of Commonwealth’s attorney offices;
- an examination of ways that changes from part-time to full-time status could be implemented;
- further examination of the potential impacts of changing offices from part-time to full-time status.

## Appendix

### SENATE JOINT RESOLUTION NO. 55

*Requesting the Joint Legislative Audit and Review Commission to study part-time Commonwealth's attorneys.*

Agreed to by the Senate, February 2, 1988

Agreed to by the House of Delegates, March 9, 1988

WHEREAS, the office of Commonwealth's attorney for localities is established by the Constitution of Virginia; and

WHEREAS, in localities with populations of less than 35,000, funding for these offices is provided by the Compensation Board on a part-time basis; and

WHEREAS, the Joint Subcommittee on the Compensation Board and State Support of Constitutional Officers found that some part-time Commonwealth's attorneys devote more than one-half of their time to the duties of Commonwealth's attorney; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Joint Legislative Audit and Review Commission is requested to study the part-time nature of Commonwealth's attorneys in localities with populations under 35,000. The study shall include, but not be limited to: (i) the determination of the actual effort expended by part-time Commonwealth's attorneys in the discharge of their official duties; (ii) the determination of the appropriate factors, including population level and workload which should be considered for the purpose of designating Commonwealth's attorneys as part-time; and (iii) the impact on the workload of the office if a state correctional facility is served by such Commonwealth's attorneys.

The Joint Legislative Audit and Review Commission shall complete its work no later than November 15, 1988, and shall submit its recommendations, if any, to the 1989 Session of the General Assembly.

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## Recent Reports

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