

**JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION
OF THE VIRGINIA GENERAL ASSEMBLY**

**Review of the
Magistrate System
in Virginia**

**House Document No. 11 (1997 Session)
A Report in a Series on the Administration of Justice**

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Preface

House Joint Resolutions 403 and 532, and Senate Joint Resolution 374 of the 1995 General Assembly directed the Joint Legislative Audit and Review Commission (JLARC) to conduct a review of Virginia's magistrate system. Interest in a number of issues cited in the mandates, including establishment a full-time magistrate system, the adequacy of the magistrate system's compensation structure, and increased use of magistrate videoconferencing, provided the impetus for this study. This report presents the staff findings and recommendations regarding these and other issues related to Virginia's magistrate system.

This study found that the establishment of a full-time magistrate system appears neither necessary nor cost effective at this time. The workload of many offices does not warrant full-time status, and a full-time magistrate system could require an additional \$10 million annually. However, magistrate compensation should be enhanced to eliminate the salary disparity that exists between part- and full-time magistrates and to align the entire magistrate compensation structure with the executive branch salary scale for comparable positions.

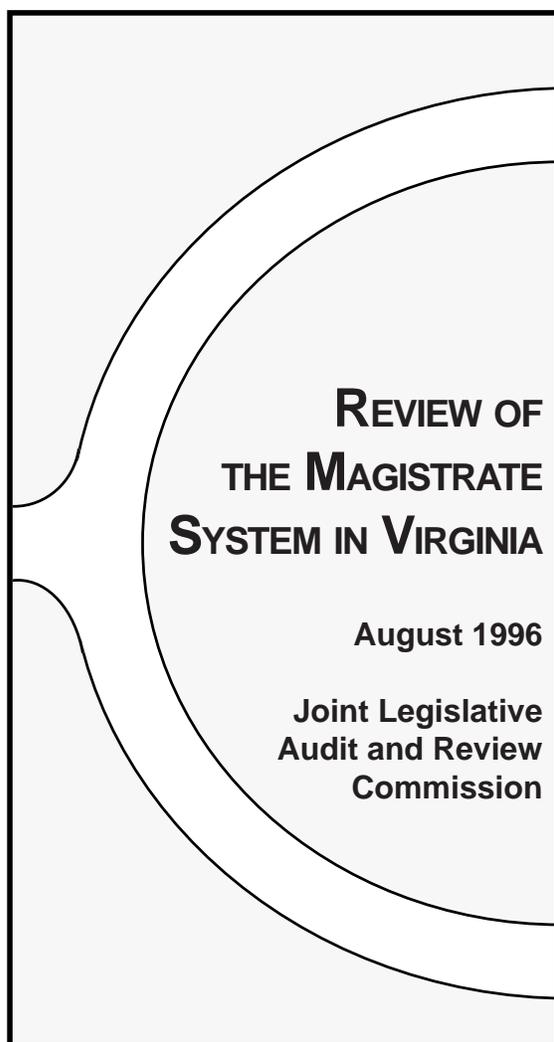
In order to maximize the potential benefits to the State judicial system associated with magistrate videoconferencing, the Office of the Executive Secretary of the Supreme Court needs to take a more active role in the development and application of this technology. Finally, analysis conducted for this study also indicates that, due to a number of structural and non-structural factors, the magistrates' scope of authority should not be broadened at this time. In addition, greater structure and consistency is needed in the magistrate system's monitoring process.

The majority of recommendations in this report have received the support of the Office of the Executive Secretary of the Supreme Court. On behalf of JLARC staff, I would like to thank the staff of the Office of the Executive Secretary of the Supreme Court, the Virginia Magistrates Association, and chief magistrates and magistrates throughout the Commonwealth who assisted in our review.

Philip A. Leone
Director

August 12, 1996

JLARC Report Summary



Virginia's magistrate system was established in 1974 as part of a comprehensive statewide court reorganization, replacing the justice of the peace system. Magistrates are the first contact many individuals have with the State's judicial system because magistrates conduct many duties for the court system. These duties include issuing arrest and search warrants, conducting bond hearings, and accepting pay-

ment and guilty pleas for specific misdemeanor offenses.

Magistrate services are available to residents and law enforcement officials in each city and county in the State, although every office is not staffed on a 24-hour-per-day, seven-day-per-week basis. In localities where offices are not staffed on a full-time basis, magistrates are available on an on-call or as-needed basis to provide required services. In calendar year 1995, magistrates issued almost 850,000 processes after receiving more than one million requests for various processes or services.

House Joint Resolutions 403 and 532, and Senate Joint Resolution 374 of the 1995 General Assembly directed the Joint Legislative Audit and Review Commission (JLARC) to conduct an assessment of a number of different issues related to Virginia's magistrate system. These issues include the efficacy of establishing full-time magistrate coverage statewide, the adequacy of the magistrate system's compensation structure, and the feasibility of incorporating videoconferencing into the magistrate system on a statewide basis. Several factors cited in the study resolutions, including access to magistrate services and the retention of qualified magistrates, provided the impetus for the current study.

The current magistrate system is better structured and more uniform than the justice of the peace system which it replaced. Magistrate authority is limited to that provided by the *Code of Virginia*, and the court system has clear responsibility for magistrates. Moreover, magistrates are State employees whose compensation is not linked to any request for service in which they have decisionmaking authority.

While the magistrate system is clearly an improvement over the justice of the peace system and generally functions well, there are several issues which should be addressed to improve the current system. Significant findings of this report include:

- The establishment of an entirely full-time magistrate system appears neither necessary nor cost effective at this time. The workload in many offices does not warrant full-time status, and the cost to the State of staffing the system as currently structured on a full-time basis could require an additional \$10 million annually.
- Additional funding should be provided to eliminate the current disparity in compensation between part-time and full-time magistrates as well as to provide a one-time adjustment for the entire magistrate compensation structure. These salary structure adjustments should help mitigate the recruitment and retention problems experienced in the magistrate system, especially for part-time magistrates.
- The magistrates' scope of authority should not be broadened at this time to include an adjudicatory or arbitration role. A number of factors, both structural and non-structural, indicate that the magistrate system is not properly equipped at this time to assume these functions.
- The Office of the Executive Secretary of the Supreme Court (OES) needs to take a more active and participatory role in the development and application of magistrate videoconferencing to ensure that the State judicial system maximizes the potential benefits that might accrue through use of this

technology, while mitigating potential problems or shortcomings.

- While the technical assistance provided by OES to the magistrate system is adequate and appropriate, OES should improve the consistency and structure of the monitoring and assistance system in place for the magistrate system.

Some Magistrate Offices Should Remain Part-time

The majority of the magistrate offices in the State are staffed to provide services on an on-call or as-needed basis. Despite concerns regarding the inappropriateness of providing services in this manner, the current hours worked and the number of transactions performed as reported by chief magistrates and magistrates in many localities do not warrant the establishment of full-time offices. In many offices, the total number of hours worked in calendar year 1995 totaled less than 1,000 hours. Moreover, the total workload in the magistrate system in calendar year 1995 was lower than in calendar year 1990.

In addition, staffing data indicates that OES has been responsive in increasing part-time magistrate positions to full-time status when warranted by workload, or at the request of chief magistrates. Furthermore, factors other than the part-time status of an office can have an impact on the extent to which services are available in a relatively timely manner.

The use of part-time offices where appropriate is a cost effective option for the State. For example, to staff each office with the number of magistrates necessary to provide seven-day-per-week, 24-hour-per-day coverage could increase the cost to the State of operating the magistrate system by almost \$10 million per year. Thus, OES should continue with its current policy of maintaining part-time offices where the

workload is not sufficient to warrant full-time status. In monitoring the workload of magistrates, OES should pay particular attention to the impact that recent changes to the juvenile justice laws may have on magistrate offices.

Magistrate Compensation Should Be Enhanced

One of the primary functions of any compensation and classification structure is to enable organizations to hire and retain qualified personnel. A compensation and classification structure that is not able to attract and retain personnel may lead to instability in service provision, excessive recruiting and training costs, and morale problems. This review indicates that both the hiring and retention of magistrates appears to be negatively impacted by the existing magistrate compensation structure.

Hiring and retaining personnel in part-time magistrate positions is difficult due in part to inadequate compensation relative to full-time magistrate positions. Turnover in part-time magistrate positions is significantly higher than that for full-time positions (see figure below). Analysis conducted for this study determined that magistrates classi-

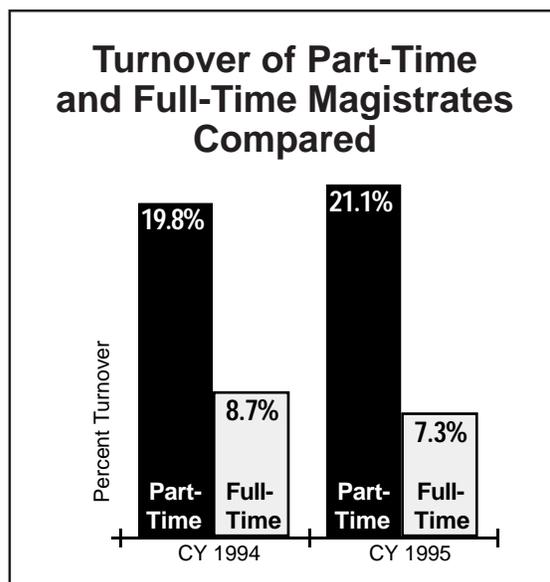
fied as part-time issue relatively the same number of processes per hour as full-time, class V magistrates. Yet, the compensation for part-time magistrates is not equal on a proportional basis to the compensation provided a class V magistrate. To eliminate this salary disparity, a salary adjustment at a cost to the State of about \$700,000 is warranted for part-time magistrates.

In addition, the entire magistrate compensation structure requires a one time adjustment to make the magistrate compensation structure more uniform with that of pay grade 10 hearing officers in the executive branch. A one-time adjustment of about five percent would make the compensation structure of magistrates more comparable to the compensation structure of hearing officers. The cost to the State of this adjustment is estimated to be slightly more than \$600,000.

Magistrate Authority Should Not Be Expanded at This Time

The mandate for this study directed JLARC to review the potential for expanding the duties of magistrates. Therefore, a potential adjudicatory and arbitration role for magistrates in areas currently within the purview of the general district courts was reviewed. A justification often given for expanding the scope of authority of magistrates is the number of additional duties that have been assigned to the magistrate system since its establishment in 1974. However, these additional duties have generally been consistent with magistrates' initial scope of authority or have tended to be more administrative in nature.

It has been the policy of the State that the judiciary be staffed with judges who are full-time and licensed to practice law. Furthermore, a number of chief magistrates and judges reported that they do not support magistrate involvement in this area. There are also a number of structural impediments to magistrate involvement in these areas, including the lack of administrative support



staff and inadequate physical facilities for judicial proceedings. Therefore, expansion of magistrate duties to include an adjudicatory and arbitration role does not appear appropriate at this time.

Magistrate Videoconferencing Holds Promise If Properly Managed

Videoconferencing is currently in use or is planned for use by magistrate offices in six judicial districts. The use of video technology for appearances before a magistrate has become the subject of substantial interest as rapid advances in technology have made this technology less expensive and easier to install and use. Moreover, the potential exists for accruing significant benefits from the use of this technology. However, a number of obstacles will need to be addressed before videoconferencing can be effectively deployed statewide.

Potential Benefits of Videoconferencing. JLARC staff identified a number of potential benefits that might be attributable to the use of videoconferencing. These benefits include improved access to magistrate services, potential reductions in the number of magistrates, and improved manageability of the magistrate system. Many of the chief magistrates across the State support videoconferencing because of the potential to achieve these benefits.

Potential Obstacles to Implementing Videoconferencing. At the same time, there are a number of obstacles that could hinder the uniform application of this technology. First, the potential cost of acquiring the necessary videoconferencing hardware statewide is estimated to be at least \$2.5 million. There is currently no source of funding, either State or local, for such costs. In addition, there may be mixed acceptance of the technology, raising questions about the willingness of all judges and law enforcement officials to support and use videoconferencing systems.

Judicial System's Role in Developing Videoconferencing Technology Should Be Enhanced. Despite the potential benefits to the magistrate system, law enforcement officials, citizens, and the State's judicial system, there has been relatively little, if any, active participation by the State judicial system in planning and developing magistrate videoconferencing. As a result, this technology has been implemented on an almost *ad-hoc*, office-by-office basis. Application of this technology in this manner could inhibit any future statewide compatibility of the systems as well as any future interfaces with the State's court system.

To better ensure that the full potential of these systems is realized, OES should assume a more active role in the development and application of videoconferencing technology in the magistrate system. Specifically, OES should conduct formal evaluations of the magistrate videoconferencing systems currently in operation in Virginia, and develop a proposal for formal pilot projects involving this technology. The establishment of full-time regional offices in the judicial districts should also be linked to the use of magistrate videoconferencing.

Oversight and Monitoring Requires Enhancement

OES technical assistance is designed to offer advice on methods for improving magistrate services as well as assisting chief magistrates in analyzing and solving management and procedural problems. Chief magistrates and magistrates are generally satisfied with the routine technical assistance provided by OES staff. However, OES needs to enhance its administration of monitoring visits and oversight of the magistrate system. Additional structural and reporting requirements should be developed and implemented in order to better promote consistency and effectiveness in the delivery of magistrate services.

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I. Introduction

Senate Joint Resolution 263 of the 1995 General Assembly Session required the Joint Legislative Audit and Review Commission (JLARC) to review the functional area of administration of justice including the magistrate system. In addition to SJR 263 (Appendix A), three additional resolutions requiring JLARC reviews of specific issues related to the State's magistrate system were also passed by the 1995 General Assembly. These resolutions are House Joint Resolution 403 (HJR 403), House Joint Resolution 532 (HJR 532), and Senate Joint Resolution 374 (SJR 374).

HJR 403 (Appendix B), HJR 532 (Appendix C), and SJR 374 (Appendix D) specifically require JLARC to address the following issues:

- the efficacy of establishing full-time magistrate coverage statewide,
- the adequacy of the magistrate's compensation package,
- the appropriateness of broadening the current scope of a magistrate's responsibilities, and
- the feasibility of incorporating videoconferencing into the magistrate system on a statewide basis.

The study was prompted by concerns regarding access to timely and quality magistrate services in some areas of the State. In addition, it has been suggested that magistrate compensation levels have contributed to local offices having difficulties retaining qualified magistrates. Finally, there has been a sense that videoconferencing would expand and facilitate the delivery of magistrate-related services.

This chapter includes a discussion of the current JLARC review, a description of the research activities conducted by JLARC staff to complete this study, and a description of the report organization. The implementation of the current magistrate system in 1974 and its current organization within the State judicial system is also discussed. This chapter concludes with a discussion of the general operation of the magistrate system.

JLARC REVIEW AND REPORT ORGANIZATION

This JLARC staff review of the magistrate system provides an assessment of a number of issues related to staffing, compensation, videoconferencing technology, and State oversight and administration. A variety of research activities were undertaken to conduct this review. This section details the study issues, the research activities undertaken by JLARC staff, and provides an overview of the remaining chapters of this report.

Current Study Issues

JLARC staff developed four major study issues to evaluate the concerns regarding the magistrate system expressed in the study mandate. These issues include a review of:

- the appropriateness of the current staffing and compensation policies for magistrates,
- the adequacy of the oversight and assistance provided the magistrate system,
- the efficacy of expanding the use of videoconferencing to provide magistrate services, and
- the potential for expanding the scope of the responsibilities assigned to the magistrate system.

Research Activities

Several research activities were undertaken to address the study issues. These activities included a mail survey of all magistrates and chief magistrates, site visits to selected magistrates' offices, structured interviews, file reviews, document reviews, and telephone interviews with selected law enforcement officials and judges and with court system administrative staff in other states.

Mail Survey of Chief Magistrates and Magistrates. The study team conducted a separate mail survey of the 32 chief magistrates and 407 magistrates. The survey was designed to obtain both general and specific data related to the magistrate system. For example, general data regarding magistrates' and chief magistrates' employment history, education level, and length of service was collected. More specific data collected included chief magistrates' and magistrates' perceptions of:

- the need for specific types of training,
- the potential applicability of magistrate videoconferencing,
- the ability of the system to absorb expanded responsibilities, and
- the quality of communication within the system and individual offices.

Thirty-one of 32 chief magistrates completed and returned their survey for a response rate of 97 percent. More than 78 percent of the magistrates completed and returned their surveys.

Site Visits to Selected Local Magistrates' Offices. Site visits were conducted to ten magistrate offices. Offices visited were selected based on features such as the presence of videoconferencing capability, whether the office served an urban or rural locality, or the workload of the office. During site visits, JLARC staff interviewed selected

magistrates as well as the applicable chief magistrate. In addition, in two offices JLARC staff observed the operation of videoconferencing equipment used to conduct magistrate business between a main office staffed by a magistrate with a remote or satellite office staffed by local police.

Structured Interviews. In addition to the structured interviews conducted in conjunction with the site visits, structured interviews were also conducted with the following:

- other selected magistrates and chief magistrates,
- Office of the Executive Secretary of the Supreme Court staff,
- Department of Personnel and Training staff,
- Department of Information Technology staff, and
- staff in selected professional organizations.

Document and File Reviews. Document and file reviews were also conducted by the study team. Documents reviewed included the *Code of Virginia*, previous studies of the State's court and magistrate systems, related reports from other states, and reports from professional associations. Reviews of files maintained by the technical assistance department of the Office of the Executive Secretary of the Supreme Court (OES) were also conducted.

Interviews with Judges and Local Law Enforcement Officials. The study team also conducted structured interviews by telephone with 12 circuit and general district court judges and officials from 13 local law enforcement offices. Interviews with judges focused on issues related to the structure of the magistrate appointment and oversight process, expansion of duties, and other suggestions for improvements to the magistrate system. Local law enforcement officials' interviews focused on perceptions regarding timely access to services and the quality of services provided by magistrates.

Interviews with Selected Other States' Court System Administrative Agencies. JLARC staff also conducted telephone interviews with other selected states' court administrative agencies. The purpose of these interviews was to identify what duties their magistrates or justices of the peace performed, training requirements, compensation-related issues, and the process used to provide oversight or administration of the system.

Report Organization

The remainder of this chapter provides an overview of the magistrate system in Virginia. Chapter II examines the issues related to the use of part- and full-time magistrates offices, and examines the issue of magistrate compensation policies. Chapter III reviews the technology of videoconferencing and its applicability to the magistrate system. Finally, Chapter IV examines issues related to the potential for expanding magistrates' authority and State technical assistance and oversight.

ORGANIZATION AND STRUCTURE OF THE MAGISTRATE SYSTEM

The Virginia magistrate system was established in 1974, replacing the justice of the peace system. Magistrates are the first contact many individuals have with the State's judicial system. Magistrates conduct many duties, all of which are stipulated in the *Code of Virginia*, for the court system. Moreover, unlike the justice of the peace system, the magistrate system is clearly the responsibility of the State's judicial system. In addition, there are a number of professional and educational requirements that individuals must meet in order to be appointed as a magistrate.

Magistrate System Established in 1974

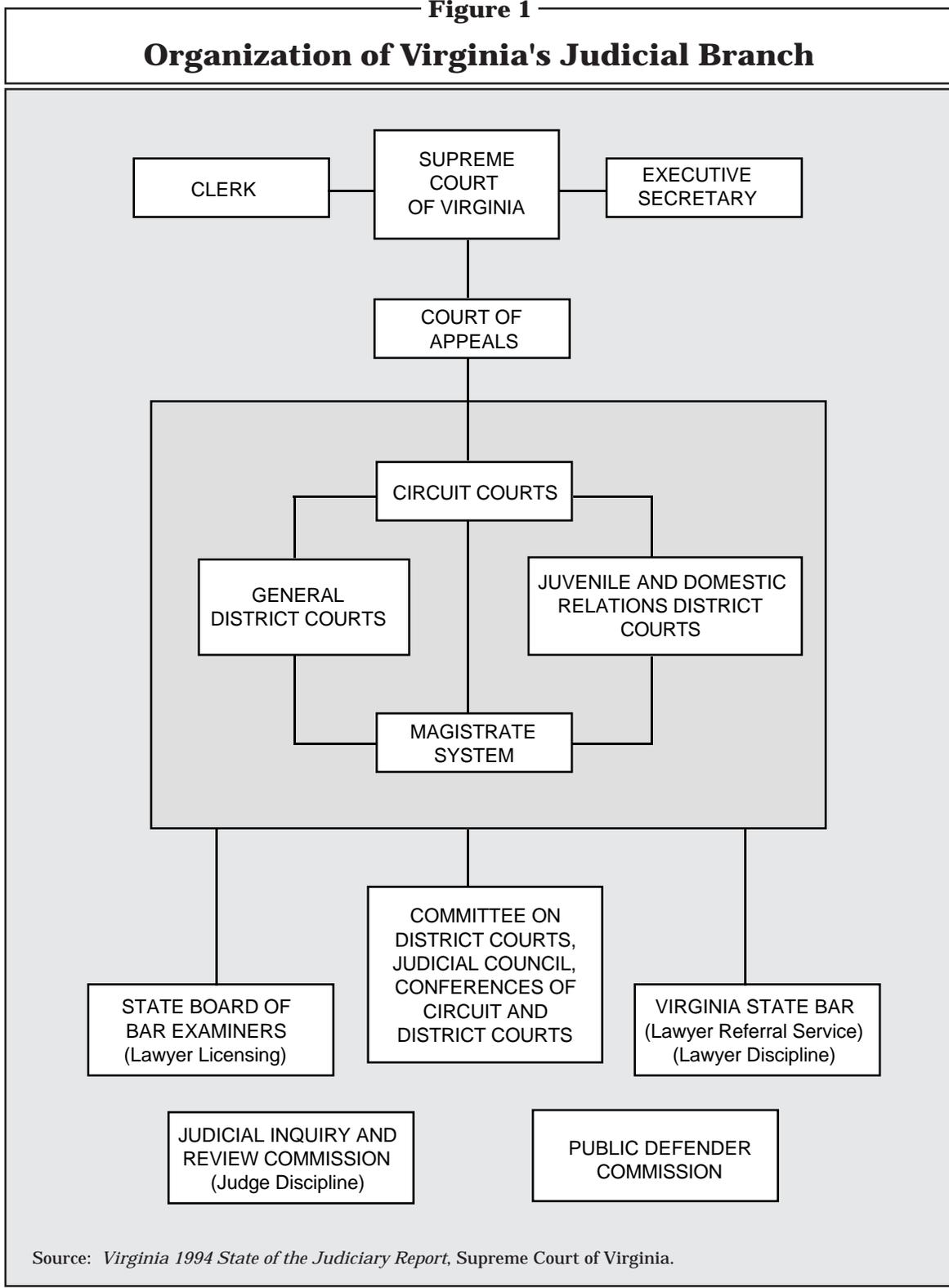
Prior to 1974, many of the activities currently conducted by magistrates were performed by justices of the peace. Justices of the peace were officials whose salaries were primarily derived from the fees assessed for the services provided. This fee for service provision was one of the overarching concerns continually expressed regarding the justice of the peace system. However, despite continued restructuring to address this issue and other concerns with the justice of the peace system, a comprehensive review of Virginia's entire judicial system was conducted in the early 1970s. This comprehensive review culminated in the General Assembly abolishing the justice of the peace system through the Court Reorganization Act of 1973.

The Court Reorganization Act, which was implemented in 1974, established the magistrate system to conduct many of the duties previously the responsibility of justices of the peace. The Act clearly placed the magistrates within the State's judicial branch of government and assigned various segments of the judiciary with statutory responsibilities for overseeing various facets of the magistrate system (Figure 1). Further, the restructuring limited a magistrate's authority and responsibilities, many of which were similar to those of justices of the peace, to only those expressed in statute.

Role of the Magistrate System

Magistrates are considered judicial officers, but they are not judges nor do they possess trial jurisdiction. Yet, magistrates are often the first contact many individuals have with the State's judicial system. As described by the Office of the Executive Secretary of the Supreme Court:

The principal function of the magistrate is to provide an independent, unbiased review of complaints brought to the office by police officers, sheriffs, deputies and citizens. [However,] magistrates are not police officers nor are they in any way connected with law enforcement. Instead magistrates are issuing officers who serve as a buffer between law enforcement and society.



As noted above, the primary role of the magistrate is to provide an objective review of complaints against individuals brought by private citizens, police, and sheriffs and their staff. For example, if a police officer believes that probable cause exists to arrest an individual for a crime, the officer would, under oath, present the evidence to a magistrate and request that a warrant for that individual's arrest be issued. Clearly, in that role the office of the magistrate would have to be independent from the law enforcement community.

Magistrates are responsible for performing many duties for the court system. The *Code of Virginia* specifically authorizes magistrates to carry out these duties. The *Code* provides the authority for magistrates to:

- issue search warrants, processes of arrest, civil warrants, and subpoenas;
- admit to bail or commit to jail all persons charged with offenses;
- administer oaths and take acknowledgments; and
- issue emergency custody orders and temporary detention orders.

As discussed, the duties of magistrates are an important component of the overall functioning of the judicial system and can clearly impact the rights of individual citizens.

Various Judicial Entities Have Clear Magistrate-Related Responsibilities

Despite repeated attempts to reform the justice of the peace system, administrative oversight of the system was apparently never clearly assigned to one branch of government. Now, the judicial branch's responsibility for the magistrate system is clearly expressed in statute. For example, the *Code of Virginia* now requires the chief circuit court judge to exercise supervisory responsibility over the magistrates in his or her judicial district.

In addition, the Executive Secretary of the Supreme Court is required by the *Code* to assist with this supervision. The Committee on District Courts establishes some of the administrative policies for the magistrate system, such as the number of magistrates required in each of the Commonwealth's 32 judicial districts. Finally, chief magistrates exercise routine, ongoing administrative supervision over the magistrates in their judicial districts.

Role of the Committee on District Courts. The Committee on District Courts was created to assist the Chief Justice of the Supreme Court with the supervision of Virginia's unified court system. The Committee on District Courts establishes the total number of magistrates and support personnel for each judicial district in the Commonwealth. As noted in the *Code of Virginia*, specific magistrate-related responsibilities of the Committee on District Courts include:

- establishing the number of magistrates in each judicial district,

- establishing procedures for administrative review of appeals from personnel actions for magistrates,
- fixing salary classifications of court personnel, and
- establishing sick leave policies for magistrates.

The Committee is comprised of the Speaker of the House of Delegates, the Majority Leader of the Senate, the chairmen of the Courts of Justice Committees in the Senate and House of Delegates, two members of each of the Courts of Justice Committees appointed by the respective chairman, one circuit court judge, one general district court judge, and one juvenile and domestic relations district court judge. The *Code* also requires that the Committee on District Courts appoint a magistrate advisory committee to make recommendations to the Committee.

Role of Chief Circuit Court Judges. Section 19.2-35 of the *Code* requires the chief circuit court judges to appoint magistrates for their respective judicial districts. The *Code* also stipulates that the “chief circuit judge shall have full supervisory authority over the magistrates so appointed....” The *Code* also authorizes the chief circuit court judge to delegate his or her magistrate-related administrative oversight responsibilities to the applicable chief general district court judge.

Role of the Office of the Executive Secretary of the Supreme Court. The *Code of Virginia* also requires that the Office of the Executive Secretary of the Supreme Court (OES) assist the applicable chief judges in the supervision and training of magistrates. The *Code* states that OES “shall be authorized to conduct training sessions and meetings for magistrates and provide information and materials for their use.” In addition, statistics regarding magistrates’ workload and duty and activity hours are collected by OES.

Role of the Chief Magistrate. In addition to the administrative responsibilities of the chief circuit court judge and OES, chief magistrates have the primary responsibility for the day-to-day operation of the magistrate system. There is one chief magistrate in each judicial district who supervises the other magistrates in the district.

Requirements to Hold the Office of Magistrate

There were few, if any, requirements that had to be met to hold the office of justice of the peace. However, as the State moved from a justice of the peace system to the more structured magistrate system, minimum qualification requirements to hold the office were established and have since been enhanced. Requirements to hold the office of magistrate can generally be classified as residency-related, education-related, and requirements designed to avoid potential conflicts of interest.

Residency Requirements. At a minimum, an appointee must be a United States citizen and, in most instances, a resident of the judicial district in which the appointee will serve. However, the counties of Fairfax, Arlington, and Prince William, and the City of Alexandria are allowed to employ residents of adjoining judicial districts as magistrates.

Education-Related Qualifications. Unlike the justice of the peace system, specific levels of education are required to hold the office of magistrate. More specifically, since July 1, 1985, every magistrate appointed to an original term on or after that date is required to have a high school diploma or general education development certificate. The 1995 General Assembly further increased the level of formal education or experience required of magistrates. All magistrates appointed to an original term starting on or after July 1, 1995 must hold a bachelor's degree or have obtained equivalent experience.

Requirements Designed to Prevent Conflicts of Interest. Magistrate appointees or their spouses cannot be law enforcement officers or be employed in an administrative capacity in the court system. Moreover, an individual who is the chief executive officer, a member of the board of supervisors, town or city council, or any other governing body of a political subdivision is precluded from holding the office of magistrate. Finally, since July 1981, magistrates cannot be licensed bondsmen.

Magistrate Training Requirements. Upon appointment, all magistrates must serve a six month probationary period, during which they must meet a number of training requirements. First, during this probationary period, magistrates must receive 40 hours of training on the use of the *Magistrate Manual*, receive 30 days of on-the-job training, and attend the OES magistrate certification course and pass the certification exam. Magistrates are also required to obtain 24 continuing legal education (CLE) credits during each four-year term. Magistrates can obtain CLE credits by attending the magistrate conference and regional magistrate meetings, both of which are sponsored by OES.

OVERVIEW OF THE MAGISTRATE SYSTEM'S OPERATION

Magistrate services are available to residents and law enforcement officials in each city and county in the State. However, each of the offices in all of these localities is not staffed on a 24-hour-per-day, seven-day-per-week basis. In localities where offices are not staffed on a full-time or continuous basis, magistrates are still always available on an on-call or as-needed basis to provide requested services.

In calendar year (CY) 1995, magistrates issued almost 850,000 processes after receiving more than one million requests for a specific process or service. These processes were issued by more than 440 full-time and part-time magistrates, of which all are State employees. To fund these staff, the General Assembly has appropriated more than \$13 million for FY 1997.

Individuals employed in the magistrate system represent a broad spectrum of educational and work experiences, ranging from those with a high school diploma to those with law degrees. Work experience prior to magistrate appointment also varied widely.

Availability of Magistrate Services in Virginia

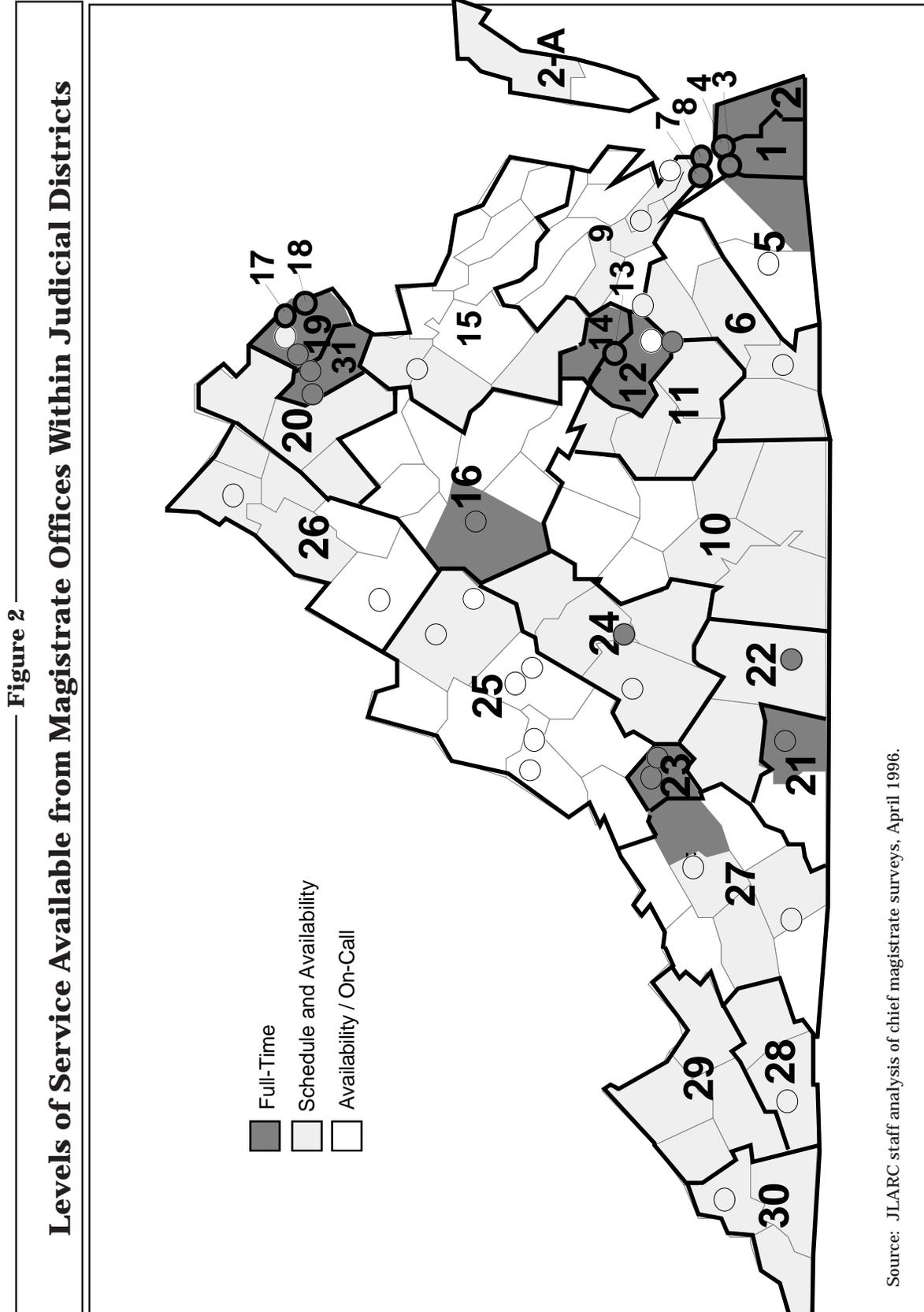
Magistrate services are available on a 24-hour-per-day, seven-day-per-week basis in each of the State's 32 judicial districts. Within this system, each of the State's 135 cities and counties has access to magistrate services. Although all magistrate offices are not staffed to maintain around the clock hours of operation, magistrates are available through these offices 24 hours per day to assist law enforcement personnel and the general public. There are three primary methods through which magistrate services are provided locally: (1) on a shift or full-time basis, (2) on a combination shift and availability basis, or (3) on an availability or as-needed basis.

Generally, a shift office uses full-time magistrates on a rotational basis in order to maintain an office open and staffed 24 hours per day. As depicted in Figure 2, shift offices are generally found in the urban areas of the State. For example, almost all of the shift offices in the State are concentrated in or near the State's five largest metropolitan areas: Northern Virginia, Tidewater, Richmond, Roanoke, and Charlottesville. The Martinsville City/Henry County combined office and the Danville City office are the only shift magistrate offices located outside of these areas.

Whereas shift magistrate offices are highly concentrated in urban areas of the State, the majority of rural areas are served by magistrate offices staffed on an availability or shift/availability basis. Law enforcement officers or citizens requiring magistrate services in localities served by availability or shift/availability magistrate offices must either plan their contact with the magistrate during magistrate in-office shifts, or contact the on-duty magistrate and wait for him or her to arrive at the office.

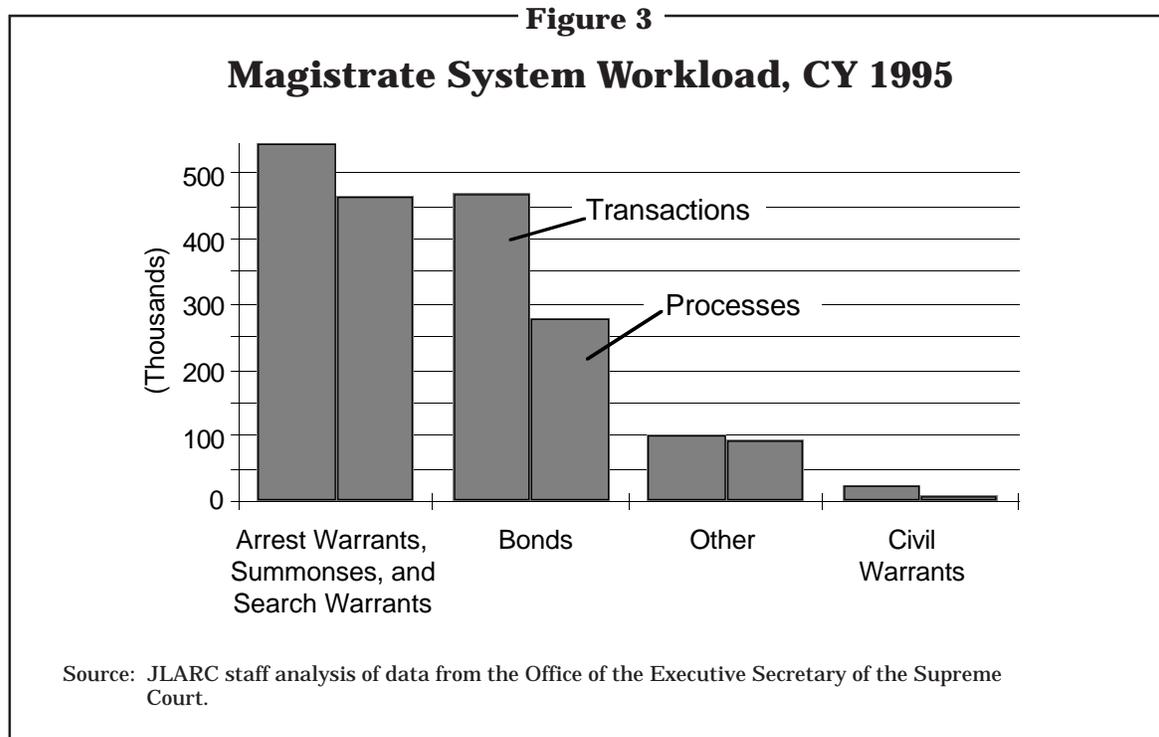
A combination shift and availability office provides a mix of the previously mentioned services. In this arrangement, magistrates typically work a set schedule and are then "on-call" or made available the remainder of the time. A high concentration of shift/availability offices can be found in the southwest and southside areas of the State as well as in the northern area of the Shenandoah Valley.

In contrast, an office staffed on an availability or on-call basis requires magistrates to be in the office or be made available for processes only as needed by law enforcement officers or citizens. The majority of the magistrate offices staffed on an availability basis are generally located in the southern area of the Shenandoah Valley, Central Virginia, and the Northern Neck.



Magistrate System's CY 1995 Workload

As described earlier, magistrates are responsible for performing many duties for the State's court system. These include issuing various types of warrants and summonses and establishing bail. In CY 1995, magistrates conducted more than one million transactions (requests for service from police or citizens) which resulted in almost 850,000 processes (warrants, bonds, or other papers) being issued. The number of different processes issued by magistrates in CY 1995 are highlighted in Figure 3. In addition, the range of total processes issued by judicial district varied significantly. Judicial district 19 issued more than 73,000 processes, while in contrast judicial district 2-A issued about 6,700 for the entire year.



Magistrate Classification Structure

The magistrate classification structure is composed of six classifications for magistrates and two classifications for chief magistrates. Each classification of magistrate and chief magistrate is expected to provide a certain number of full-time equivalent (FTE) hours per week (Table 1). Moreover, each classification of magistrate is likely to work a particular type of schedule or staff a specific type of office. For example:

- *Class I - III Magistrates:* Ninety-two percent of the class I - III magistrates responding to the JLARC staff survey reported working on either an on-call basis or a combination shift and on-call basis which are schedules commonly

Table 1

Magistrate System Classification, FTE Classification, and FTE Weekly Requirement of Hours

Classification	Number of Personnel	FTE Classification	Required Hours Per Week
Magistrate I	15	.2	1-8
Magistrate II	40	.4	9-16
Magistrate III	59	.6	17-24
Magistrate IV	73	.8	25-32
Magistrate V	76	1.0	33-40
Magistrate VI	148	1.0	35-45
Chief Magistrate I	3	1.0	35-45
Chief Magistrate II	29	1.0	35-45

Source: JLARC staff analysis of Office of the Executive Secretary of the Supreme Court 1995 *Virginia State of the Judiciary Report and Management Manual*.

found in part-time offices. As a result, many of these magistrates tend to work in offices located in rural areas of the State.

- *Class IV Magistrates:* While class IV magistrates are classified as .8 FTE and required to work fewer than 40 hours per week, they are considered full-time by OES and receive State-funded benefits. Although classified as full-time, over 95 percent of the class IV magistrates responding to the JLARC staff survey reported working on either an on-call basis or a combination shift and on-call basis which are schedules typically associated with part-time offices.
- *Class V Magistrates:* Although classified as one FTE, about 85 percent of class V magistrates responding to the survey reported working on either an on-call basis or a combination shift and on-call basis. Again, this type of schedule is commonly found in part-time offices
- *Class VI Magistrates:* Class VI magistrates are also classified as one FTE. However, unlike class V magistrates, almost 90 percent of these magistrates reported working on a shift basis only. As a result, class VI magistrates tend to be located in offices in urban areas of the State.
- *Chief Magistrate I & II:* Each of the 32 judicial districts has one chief magistrate responsible for the ongoing administration of the magistrate offices in the districts.

Staffing of Virginia’s Magistrate System

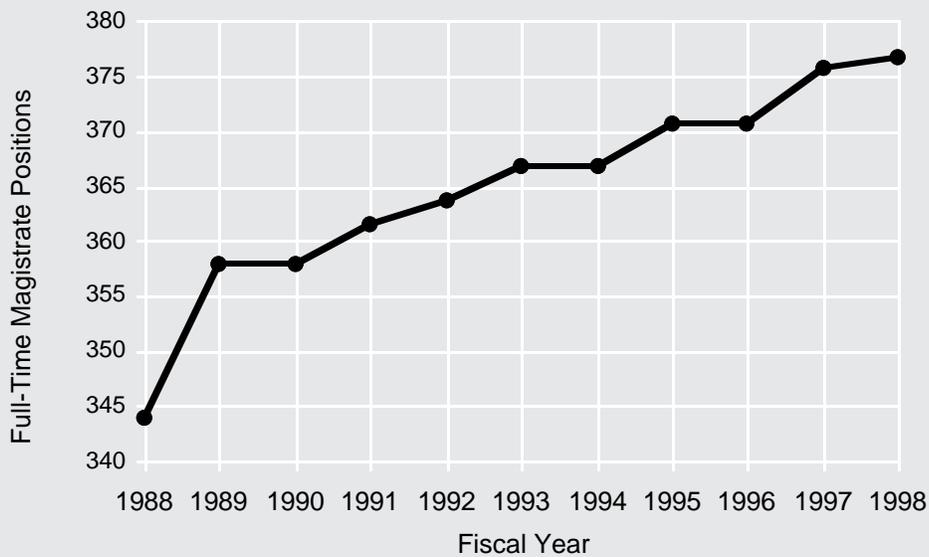
The Committee on District Courts establishes the total number of magistrates for each of the 32 judicial districts in the Commonwealth. Pursuant to §19.2-34 of the *Code of Virginia*, the number of positions appointed in each judicial district are the total number “necessary for the effective administration of justice.”

For FY 1996, the General Assembly authorized 370.8 magistrate positions. In FY 1997, an additional five positions will be funded. By FY 1998, a total of 376.8 magistrate positions will be authorized which will be an increase of 32 positions, or almost ten percent, since FY 1988 (Figure 4).

OES allocates a mix of full- and part-time positions within the total number of positions authorized by the General Assembly across the 32 judicial districts. In December 1995, the 370.8 authorized full-time equivalent positions were actually allocated as 329 full-time and 114 part-time magistrates. The total number of full-time and part-time magistrates in each judicial district in December 1995 ranged from five magistrates in judicial district 2-A (Accomack and Northampton Counties) to 30 magistrates in judicial district 19 (Fairfax County). (A complete listing of the number of full-time and part-time magistrate positions in each judicial district is provided in Appendix E).

Figure 4

Number of Authorized Magistrate FTE Positions FY 1988 - FY 1998



Note: FTE = Full Time Equivalent.

Source: JLARC staff analysis of Appropriation Acts data.

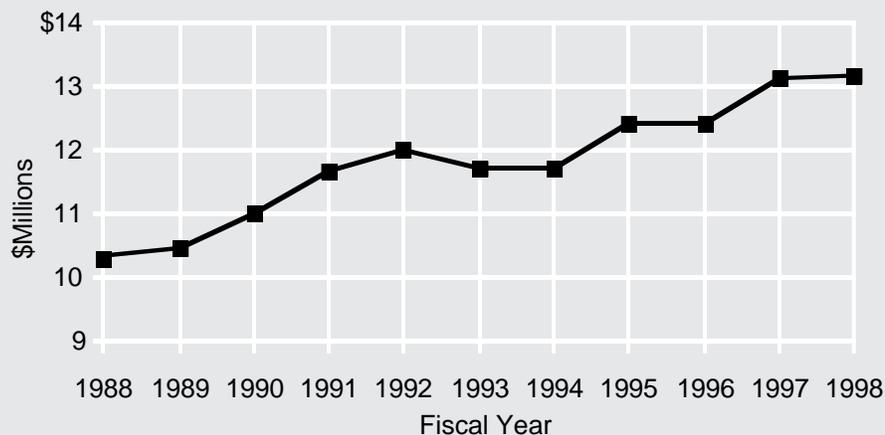
State Funding for the Magistrate System

Establishing the magistrate system in place of the fee-based justice of the peace system required the State's commitment to fund positions necessary to operate the offices. State funding is provided for the staff-related expenses in the magistrate system. All magistrates receive a State-funded salary. Full-time magistrates also receive State health and retirement benefits. Chief magistrates and magistrates also receive some reimbursement for expenses such as mileage traveled in support of the magistrate offices in their districts.

Total State funding appropriated for the operation of the magistrate system has increased from \$10.3 million in FY 1988 to almost \$12.5 million in FY 1996. As indicated in Figure 5, appropriations for the magistrate system are projected to increase to almost \$13.2 million by FY 1998.

Figure 5

State Funding for the Magistrate System FY 1988 - FY 1998



Source: JLARC staff analysis of Appropriations Act data and data from the Office of the Executive Secretary of the Supreme Court.

The majority of State funding is used for staff-related expenses, primarily salary and benefits. In FY 1996, about 98 percent of the funding appropriated for the magistrate system is projected to be used for employee compensation and fringe benefits. The remainder will be used for travel, postage, supplies, and other miscellaneous expenses.

Local Funding for the Magistrate System

As explained earlier, salary and benefits for magistrates are funded primarily by the State. At the present time, local governments are only required to provide suitable

office space and furnishings for magistrates to conduct business. However, effective July 1995, the *Code of Virginia* authorizes, but does not require, local governments to supplement the State salary of magistrates serving in their districts. Data collected on the JLARC staff surveys indicates that this practice is not widespread.

Local Governments Provide Magistrates' Office Facilities. As with other facilities for the State court system, local governments are primarily responsible for providing appropriate offices for magistrates to conduct business. The *Code of Virginia* requires:

Each county and city having a general district court or juvenile and domestic relations district court and having one or more magistrates appointed . . . shall provide suitable quarters for such magistrates. Insofar as possible, such quarters should be located in a public facility and should be appropriate to conduct the affairs of a judicial officer as well as provide convenient access to the public and law enforcement officers.

The *Code* further stipulates that whenever possible, the magistrate's office should be located at the county seat, but that offices can be located in other areas if necessary to "effect the efficient administration of justice." Local governments are also required to provide furnishings and other equipment necessary to operate the office.

Local Salary Supplement and Travel Allowance. Effective July 1995, local governments were authorized the option of supplementing the salary of magistrates. However, the *Code* limits the local supplement to no more than 50 percent of the salary paid by the State. Moreover, localities are allowed, if they choose, to provide reimbursement to magistrates for mileage traveled while carrying out their official duties.

Magistrates and chief magistrates were asked on the JLARC survey to indicate whether they received this type of local funding. As indicated in Table 2, the practice of providing local salary supplements in FY 1996 is not widespread. Significantly more magistrates reported that they anticipate receiving a local salary supplement in FY 1997. However, magistrates reported that more localities do provide some type of travel allowance.

Magistrates' Educational and Employment Background

Personnel appointed to magistrate positions represent a diverse range of previous work experience and educational backgrounds. The majority of chief magistrates and magistrates reported that their primary work experience prior to appointment was in private industry or law enforcement. Almost all of the magistrates have at least a high school education and a substantial number reported that they had received a bachelor's degree. Further, a significant number of magistrates reported holding other outside employment in addition to their appointment as magistrate.

Table 2

Status of Local Government Salary and Travel Allowances for Magistrates

Type of Local Funding	Number of Magistrates	Number of Chief Magistrates
FY 1996 Salary Supplement	8	1
FY 1997 Anticipated Salary Supplement	25	5
Travel Allowance	30	3

Source: JLARC staff analysis of magistrate and chief magistrate surveys, April 1996.

Work Experience of Magistrates. Magistrates bring to their positions a variety of work experience prior to appointment as a magistrate. The JLARC staff survey of magistrates and chief magistrates included questions regarding their primary work experience immediately prior to appointment and whether they had retired from these positions. The largest number of both magistrates and chief magistrates reported working in private industry or business prior to appointment (Table 3).

The second largest number of both magistrates and chief magistrates were previously employed in the law enforcement area. Together, these two types of employment account for the majority of magistrates and chief magistrates. Finally,

Table 3

Primary Work Experience Prior To Magistrate Appointment

Work Experience	Number and Percentage			
	Magistrates		Chief Magistrates	
Private industry or business	127	42%	11	37%
Law enforcement	57	19%	6	20%
Federal/state/local government	45	15%	5	17%
Other (health care, social services)	27	9%	1	3%
Military	21	7%	5	17%
Other law or legal services	18	6%	0	0%
Practicing attorney	5	2%	2	7%
Total Number of Respondents	300		30	

Note: Percentages may not total 100 due to rounding.

Source: JLARC staff analysis of magistrate and chief magistrate surveys, April 1996.

about 31 percent of magistrates and 26 percent of chief magistrates stated that they had retired from their primary employment prior to their appointment.

Magistrate Educational Backgrounds. The *Code of Virginia* was amended in 1995 to require that magistrates originally appointed on or after July 1, 1995 have a bachelor's degree or equivalent experience. This requirement does not apply to those magistrates appointed to an original term prior to this date. Reflective of that, magistrates and chief magistrates have educational backgrounds which vary significantly. Currently, the vast majority of magistrates and chief magistrates have at least a high school education (Table 4). Further, over one-third of the magistrates and chief magistrates reported that they had earned a bachelor's degree.

Table 4

Magistrate and Chief Magistrate Educational Backgrounds

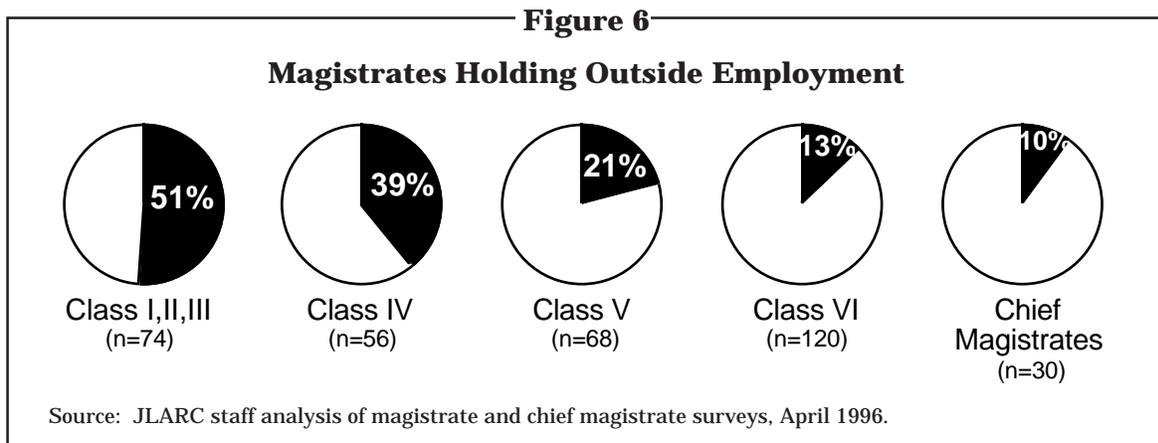
Education	Number and Percentage			
	Magistrates		Chief Magistrates	
Some high school	6	2%	1	3%
High school diploma or GED	67	21%	7	23%
Attended college	101	32%	10	32%
Associate degree	28	9%	2	6%
Bachelor's degree	79	25%	7	23%
Graduate degree	20	6%	1	3%
Law degree	16	5%	3	10%
Total Number of Respondents	317		31	

Note: Percentages may not total 100 due to rounding.

Source: JLARC staff analysis of magistrate and chief magistrate surveys, April 1996.

Additional Employment Held By Magistrates. In addition to their duties as a magistrate, some magistrates and chief magistrates hold additional employment. While there are no restrictions on holding outside employment for part-time magistrates, Committee on District Court policy states that full-time magistrates may hold additional employment only if it does not interfere with needed availability as a magistrate and does not constitute a conflict of interest. Further, this policy requires that a chief magistrate obtain the approval of the chief circuit court judge before securing any additional outside employment.

Due to the part-time nature of employment, the highest percentage of magistrates holding outside employment occurs with part-time, class I - III magistrates (Figure 6). While about 39 percent of magistrate class IV's reported holding outside employment, fewer class V and VI magistrates reported holding additional outside employment.



Further, only three of the chief magistrates reported that they held other outside employment.

The nature of this additional employment held by magistrates and chief magistrates covers a wide variety of employment possibilities. For example:

A full-time magistrate from a shift/availability office reported working 40 to 50 hours per week as a radio announcer and sports editor for a local newspaper.

* * *

A chief magistrate reported that he worked approximately 37 hours per week as a funeral director.

* * *

A full-time magistrate from a large, full-time office reported working 20 to 40 hours per week as a practicing attorney.

Both magistrates and chief magistrates have a broad range of prior and current work experiences.

II. Magistrate System Staffing and Compensation

As discussed in the previous chapter, most of the magistrate offices in the State provide services through either an on-call, availability basis or through a combination of scheduled office hours and an on-call basis the remaining hours of the day. Because this means most offices are not staffed to be open continuously, some concerns have apparently been raised that providing magistrate services in this manner may not be appropriate.

While providing all magistrate offices sufficient staff to provide 24-hour-per-day, seven-day-per-week service may be highly desirable, the workload of many offices does not warrant the establishment of full-time offices. As a result, the current reliance on part-time, on-call offices where workload is not sufficient for full-time status appears to be appropriate.

Moreover, the compensation structure for the magistrate system requires adjustments to enable it to promote a more stable workforce. At the present time, the salary scales for magistrates in positions classified as less than one full-time equivalent (FTE) do not reflect the fact that, on an hourly basis, they do the same amount of work as full-time magistrates. As a result, where vacancies are hard to fill and turnover is high, the provision of services could be negatively affected.

In addition, the entire magistrate compensation structure requires a one-time adjustment to make it more reflective of the comparable pay scale used in the executive branch. Finally, the practice of allowing local salary supplements to State-funded magistrate compensation should be discontinued to limit the potential negative impact on systemwide morale and to preclude any appearance that magistrate objectivity might be compromised.

STAFFING OF VIRGINIA'S MAGISTRATE SYSTEM

HJR 403 requires that the current JLARC review determine the efficacy of establishing full-time magistrate coverage statewide. From an access standpoint, this type of service would be highly desirable. However, the current hours worked and activities performed in many localities do not support the establishment of full-time offices. Furthermore, factors other than the part-time status of an office appear to have an impact on the extent to which services are provided in a relatively timely manner.

The use of part-time offices where appropriate is a cost effective option for the State. Staffing the entire system on a full-time basis could increase the cost to the State by almost \$10 million annually. As a result, the State should continue to maintain part-time offices where workload is not sufficient for full-time status. Finally, the Office of the

Executive Secretary of the Supreme Court (OES) should actively monitor the impact of recent changes to the juvenile justice code on the workload of the magistrate system.

Workload of Some Magistrate Offices Warrants Part-Time Status

While there may be many clear advantages to staffing a local magistrate office on a seven-day-per-week, 24-hour-per-day basis, the workload in many offices is not of sufficient quantity to warrant the number of magistrates necessary to maintain that type of service. Moreover, some of the magistrates and chief magistrates interviewed by JLARC staff noted that a full-time magistrate system from their perspective is either not necessary or not cost effective. Finally, other data including the change of the entire system's workload since 1990 indicate that the current practice of using part-time offices appears appropriate.

Workload in Many Part-Time Offices Is Not Sufficient for Full-Time Coverage. While every magistrate office provides services to either the public or law enforcement officials, the workload in many of these offices is of such low volume that the current part-time status appears appropriate. For example, in calendar year (CY) 1995, there were 12 local offices that provided fewer than 1,000 hours of service by the assigned magistrates.

More specifically, four of these offices provided services for fewer than 500 hours in CY 1995. Clearly, in these cases, full-time status is not warranted. Moreover, on average, workload and activity hours in part-time offices were well below the workload and activity hours recorded by magistrates in the localities served by full-time offices as well as all offices statewide (Table 5).

Table 5

Comparison of Magistrate Office Workload Activity CY 1995

Office Status	Average Number of Transactions	Average Activity Hours	Average Number of Transactions Per Average Activity Hour
Part-Time	4,109	2,833	1.45
Full-Time	31,446	13,261	2.37
All Offices	9,080	4,728	1.92

Note: Data for chief magistrates are not included.

Source: JLARC staff analysis of CY 1995 workload data collected by the Office of the Executive Secretary of the Supreme Court.

Another useful comparison is the extent to which the activity hours of part-time offices in CY 1995 approximate the total hours of operation necessary to maintain seven-day-per-week, 24-hour-per-day coverage. To staff an office seven days per week, 24 hours per day, a minimum of 8,760 continuous hours of staff coverage would be necessary. As a result, an office currently generating staff hours sufficient for seven-day-per-week, 24-hour-per-day coverage will have a ratio of activity hours, relative to the 8,760 hours base, of one or greater.

As indicated in Table 6, the ratio of average activity hours in full-time offices relative to the 8,760 hour base substantially exceeds one. This is reflective of the fact that many of the larger urban offices often, or in some cases always, have two magistrates on duty in the office at the same time. Moreover, the average number of transactions completed per hour relative to the 8,760 hour base in full-time offices is substantial.

Table 6

**Magistrate Offices' Activity Based
on Continuous Coverage
CY 1995**

Office Status	Ratio of Average Activity Hours Per 8,760 Hour Base	Ratio of Average Transactions Per 8,760 Hour Base
Part-Time	.32	.47
Full-Time	1.50	3.60
All Offices	.54	1.00

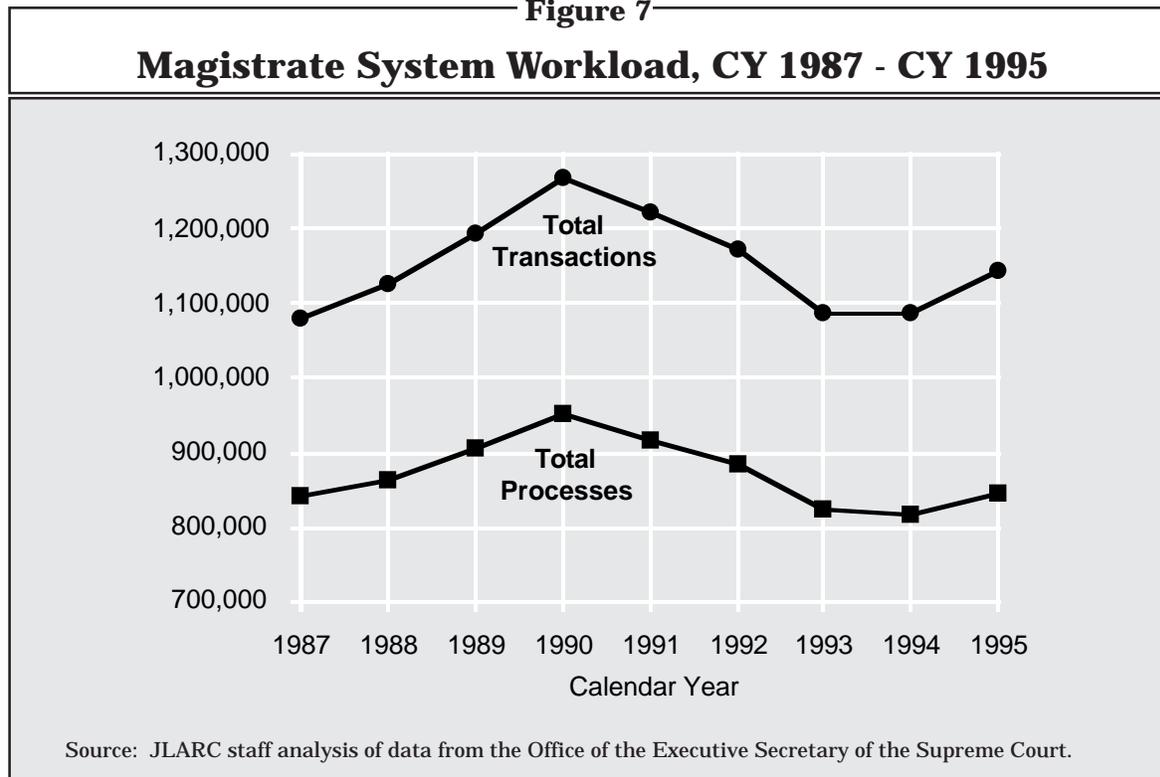
Note: Data for chief magistrates are not included.

Source: JLARC staff analysis of CY 1995 workload data collected by the Office of the Executive Secretary of the Supreme Court.

In contrast, the average number of activity hours in part-time offices is considerably less than the comparison base of 8,760 hours. Moreover, the average number of transactions completed per hour using the 8,760 hour base is lower than that for the full-time offices. Again, this indicates that staffing some offices on a part-time or availability basis is appropriate.

Workload of Magistrate System Has Generally Decreased Since CY 1990.

While the number of magistrates has increased by almost eight percent between FY 1988 and FY 1996, the total recorded activity or workload in the magistrate system has generally decreased since CY 1990. As illustrated in Figure 7, the recorded activity in the magistrate system statewide peaked in CY 1990, then gradually declined through CY 1994. The recorded workload increased slightly in CY 1995 due primarily to an increase in probable cause and bond hearings. Still, the total number of processes issued in CY



1995 is only about 6,000 more than magistrates reported issuing in CY 1987, and remains well below the level reported in CY 1990.

Much of this decline in workload can be attributed to the fact that many of the civil warrants are now issued by the general district court clerks' offices rather than by magistrates. However, it must be noted that many magistrates believe that the data collected by OES is not totally reflective of their workload. For example, magistrates stated that the number of telephone calls and routine requests for information by the general public are not collected by OES. Nonetheless, the data collected by OES are the most comprehensive and systematic data currently available for each individual office.

Other Data Indicates Part-Time Status of Many Offices is Appropriate.

As part of the annual budget and appropriation process, OES collects data from each chief magistrate regarding requests for position regrades and for additional positions. In the 1996-98 biennium magistrate system budget proposal, chief magistrates requested a total of 56.2 additional FTE positions. However, in 56 individual part-time offices, no additional positions were requested. It must be noted that some of the positions requested for specific localities may have been intended to serve offices in more than one locality.

In addition, magistrates and chief magistrates from districts or offices comprised of many part-time or availability offices interviewed by JLARC staff noted that a full-time system at this time is either not necessary or not cost effective:

A magistrate from an office with limited, scheduled office hours and staffed on an on-call or availability basis other times noted that he didn't think a system comprised of full-time offices was really necessary at this time. He noted that there are days he does not get a call requesting his services. He noted on a recent duty weekend he had one call Friday night, no calls on Saturday, and one call early Sunday morning.

* * *

One chief magistrate, with primarily shift/availability offices in his district, noted that he had three offices that he believed warranted full-time status. However, the other offices could be part-time or some combined with offices in other localities.

Some of the other magistrates and chief magistrates interviewed noted similar themes regarding this issue in the context of the system's current structure. However, some also suggested alternative approaches like supplementing the use of part-time offices with videoconferencing or combining offices in contiguous localities.

1996 Changes to State Juvenile Laws May Impact Magistrate System Workload

At the current time, magistrate involvement with juvenile justice issues is very limited. However, the changes made to the State's juvenile code during the 1996 General Assembly Session have the potential to impact the magistrate system's workload. One of the changes that could substantially impact the magistrate system is the granting of authority to magistrates to issue juvenile detention orders.

Language in the new law appears to limit magistrate involvement to only very specific circumstances. Despite this language, there is a great deal of concern that in some areas of the State magistrates may become more involved in the juvenile detention order process after normal working hours. Moreover, OES staff have indicated that juvenile detention orders can be time consuming to complete, especially the process of placing the juvenile in a secure facility.

OES staff have noted that the on-call, part-time offices in rural areas of the State have the potential to be negatively impacted by these changes. However, because the changes to statute did not become effective until July 1996, the workload impact on the magistrate system cannot be evaluated at this time. As a result, OES will need to monitor the impact of the recent *Code* changes on the workload of the magistrate system.

In addition to the uncertainty over the potential impact of the changes to the juvenile code on the magistrate system, both chief magistrates and magistrates reported the need for additional training regarding their role and duties with juvenile intake issues. OES has been proactive in providing initial training for all magistrates on this

issue. However, with so much ambiguity regarding the role of magistrates in the juvenile intake process, further training may be necessary as the magistrate system's role is more precisely defined and clarified. As a result, OES will need to continue to monitor and refine the training program for magistrates regarding this issue.

Factors Other Than Part-Time Office Status Can Affect Access to Magistrate Services

On the JLARC staff survey, chief magistrates who had districts with part-time offices were asked to indicate the extent to which the use of part-time or availability offices negatively impacted law enforcement officials' efforts. Ten chief magistrates (46 percent) responding to that question indicated that they believed the use of part-time or availability offices to some degree negatively impacted law enforcement efforts in their districts. To determine the extent of that issue, JLARC staff contacted officials from a total of 13 local law enforcement offices in the ten districts.

The majority of law enforcement officials were either generally satisfied with their access to magistrate services or believed that the use of part-time offices has not systematically resulted in the inability of their law enforcement offices to carry out their duties. However, problems, some apparently related to local magistrate administration issues, were noted. For example:

One local law enforcement official who is served by a magistrate's office staffed primarily on an availability basis noted that his staff always has good access to a magistrate when needed. However, he was greatly concerned with the manner in which the magistrates bonded individuals who had been arrested on a failure to appear charge. He noted that because the magistrates set bail at such a low amount, the individual would post bond and not appear in court again. He said that in cases like this, his officers simply pick up the same individual over and over again.

* * *

One sheriff noted that his office never knew in advance which magistrate was going to be on duty. As a result, his deputies had to call around to see which magistrate was covering his office. The sheriff stated that he has brought this issue to the attention of the chief magistrate but that nothing had yet been resolved.

OES has also identified the fact that there is likely some inconvenience to individuals or agencies in need of services from an on-call or part-time magistrate office. For example, as part of the biennial magistrate system budget submission for 1996-98, OES noted that:

While magistrate in-office and on call schedules are developed with the needs of the locality in mind, law enforcement personnel and the public still experience inconvenience in locating magistrates.

Some local law enforcement officials noted that although they generally had access to magistrate services, they would prefer to have magistrates available immediately. While having magistrate services readily available to every organized law enforcement department would likely be desirable, the cost to the State of providing that type of service statewide would likely be prohibitive.

As noted earlier, a number of chief magistrates reported having concerns about law enforcement officials access to magistrate services through part-time offices. In contrast, only about nine percent of the magistrates responding to the JLARC staff survey reported that law enforcement officials did not have adequate access to magistrate services through their offices. More surprisingly, about 50 percent of the magistrates who indicated that citizens and law enforcement did not have adequate access to magistrate services in their offices worked in full-time, shift offices.

Finally, some of the problems or concerns expressed by local law enforcement officials regarding access to magistrate services could be local magistrate office management issues rather than simply staffing issues. For example:

In correspondence to a chief magistrate regarding magistrate availability, OES staff noted that magistrates in that district reported being told by their chief magistrate to “turn off their pagers and unhook their telephones, during the times they would normally be sitting, so that law enforcement officers would not be able to reach them during hours when they were not scheduled to be in the office [The magistrates’] comment was that you felt more staffing would be approved if the law enforcement officials complained about the problem.”

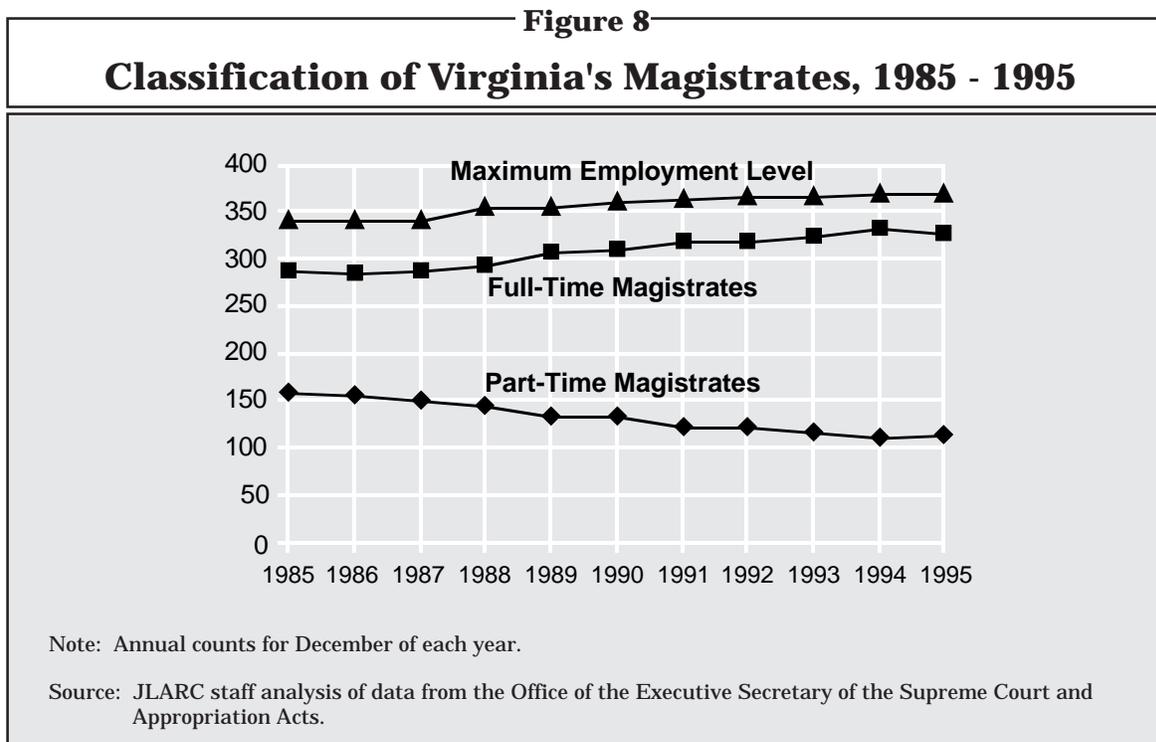
As discussed, factors other than the number of magistrates assigned to a particular office or district can impact how local law enforcement officials access magistrate services. For example, if turnover is high in rural areas that utilize part-time positions, timely access for law enforcement officials and citizens could be impacted.

OES Has Been Responsive to Upgrading Part-Time Positions to Full-Time Status

In December 1995, there were 443 part-time and full-time magistrate positions authorized in the 32 judicial districts. Of that total, 114 were classified as part-time and 329 were classified as full-time. Upgrades in magistrate classifications are in part driven by the average number of full-time equivalent (FTE) hours worked by individual magistrates in the previous calendar year.

As a result, if workload is in fact increasing and requiring a part-time, availability magistrate to spend more time in the office processing the demands for service, then the average number of FTE hours for that magistrate should increase. Once the average number of FTE hours is greater than the minimum number of FTE hours for the next higher magistrate classification, OES typically recommends that particular position for a regrade to a higher classification. As a result, the magistrate would be in a new higher paying position classification that more accurately reflects the hours required in that particular office. If that trend continued over time, the part-time position should eventually be reclassified as full-time.

Since 1985, the total number of magistrates employed on both a part-time and full-time basis has remained relatively constant at about 445. However, as depicted in Figure 8, reliance on the use of part-time magistrates has decreased from 161 in 1985 to 114 in 1995. These facts lead to the conclusion that OES has been fairly responsive in upgrading the classification of magistrate positions to either meet workload demands or the requests of chief magistrates.



A Full-Time Magistrate System at this Time Would Not Be Cost Effective for the State

As discussed in the previous section, the use of on-call, availability offices in some localities appears to be an appropriate method for meeting current workload demands. Having a magistrate system that is comprised of only full-time, shift offices is appealing from a systemwide management perspective. However, within the context

of the current system's structure, it is clearly not a cost effective option for the State at this time.

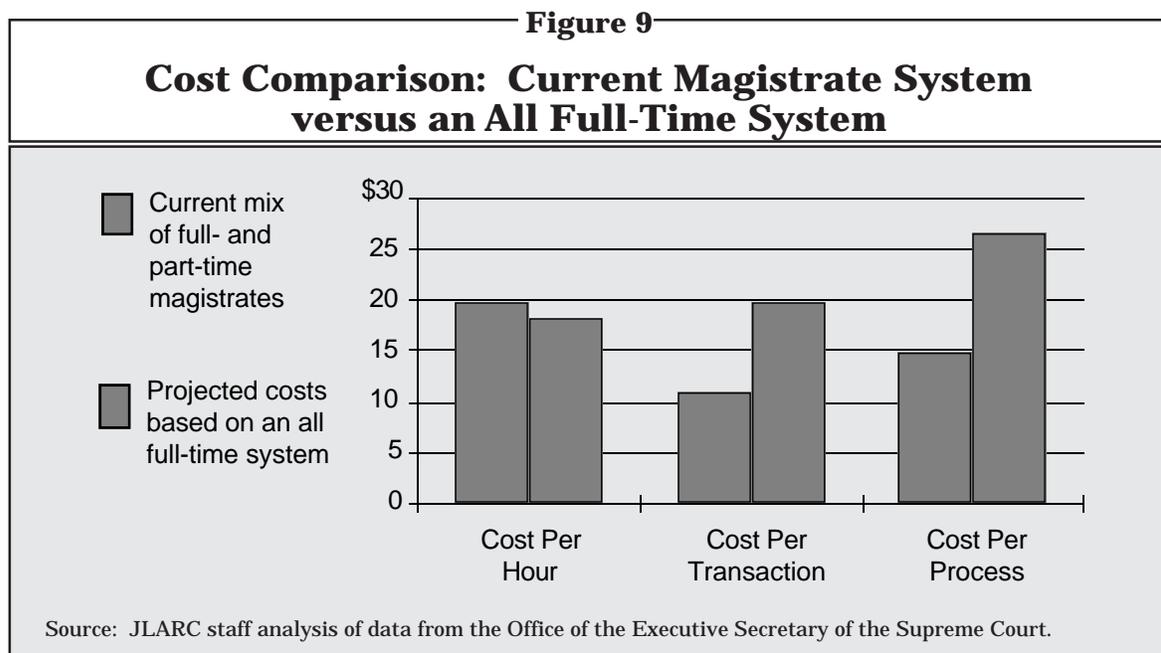
For example, JLARC staff developed an estimate using FY 1996 salary and benefit data of what the cost to the State would be if the current part-time offices were staffed at a level to provide full-time coverage. In this example, every part-time office was allocated five class VI magistrates. Class VI magistrates are the classification typically assigned by OES to full-time, shift offices and, as a result, almost 90 percent of the class VI magistrates responding to the JLARC staff survey reported working on a shift basis only.

In this example, cost data for offices currently staffed to provide full-time service were not changed. The cost to the State of allocating sufficient class VI magistrates to enable part-time offices to provide 24-hour-per-day, seven-day-per-week coverage could increase by almost \$10 million per year to more than \$22 million.

In an entirely full-time system, the cost per hour worked would actually decrease slightly because all offices would be full-time and thus working significantly more hours. However, as depicted in Figure 9, the unit cost or the cost for each transaction requested and process issued would increase significantly in an entirely full-time system.

More specifically, the cost of a full-time status for some low volume offices could be tremendous. For example:

Based on FY 1996 cost data, the cost to the State of each magistrate process issued in Highland County in 1995 was approximately \$50. If



the Highland County magistrate's office was a full-time office, the cost per process issued, if the workload did not increase, would be more than \$600.

It must be noted that elevating offices to full-time status may generate greater workload because there would more consistent access in many localities to a magistrate's services. If that did occur, the cost per transaction would decrease, although probably not significantly unless the increase in workload was substantial.

Finally, a policy decision could be made to allocate only class V magistrates to the current part-time offices that were to be upgraded to full-time status. Because the starting salary for a class V magistrate is about 10 percent lower than for a class VI, the increased cost to the State of establishing full-time offices would be mitigated to some degree.

Recommendation (1). **At the present time, it does not appear that establishment of an entirely full-time magistrate system should be the goal of the State. As a result, the Office of the Executive Secretary of the Supreme Court should continue to recommend sufficient staff to properly operate part-time offices where the workload does not warrant full-time status.**

Policies Requiring More Extensive Background Investigations Should Be Developed

HJR 403 requires JLARC to review "conducting background investigations [for magistrates] in the same manner as are conducted for other law-enforcement personnel" as a condition of employment. At this time, there are no formal requirements in the magistrate system for background investigations that include a criminal history review for individuals prior to their appointment as magistrate.

Nonetheless, the majority of chief magistrates reported conducting various forms of background investigations, including criminal history reviews, prior to appointing magistrates. However, because the administration of background investigations can deviate across the State, additional structure in the background investigation process is needed. To provide this structure, written policies that establish guidelines for administering background investigations with a criminal history review should be developed by OES for approval by the Committee on District Courts.

Criminal History Checks Can Reveal Potential Factors that Should Be Considered in the Hiring Process. Chief magistrates indicated that it is important to hire magistrates who have an impeccable character. In addition, some chief magistrates stated that certain factors in a candidate's background would alert them to potential problems that may prevent the candidate from serving effectively as a magistrate. For example:

One chief magistrate indicated that background checks are an important part of the district's magistrate appointment process. For example, an applicant for a magistrate position had a law degree and had been a magistrate in another state. Moreover, the chief magistrate felt the candidate would be an outstanding magistrate in Virginia. However, a criminal records check indicated that the candidate had two DUI arrests on his record. Neither on his application nor during his interview did the candidate indicate these offenses had occurred. Despite the applicant's credentials, the chief magistrate did not recommend the appointment of this individual because: (1) he falsified information on his State application, and (2) the chief magistrate believed the DUI arrests could impede the individual from carrying out his duties.

* * *

Another chief magistrate reported to JLARC staff that background investigations are very important in the district's magistrate appointment process. Although he reviews the State application and prior employment references, this is often not enough. For example, he once had an applicant for a magistrate position who had gaps in his employment history. The criminal history portion of the background investigation revealed that the individual had been incarcerated during one of the periods of time with no employment history. The chief magistrate noted that the previous employment references would likely not have known or not informed him about the fact that this individual had been incarcerated.

These chief magistrates believed that these potential problems would not have been revealed without a background investigation that included a criminal history review.

Current Magistrate Appointment Policies Do Not Address Criminal History Reviews. Neither the *Code of Virginia*, nor the Committee on District Courts require chief magistrates or magistrate appointing authorities to conduct background investigations that include a criminal history review on potential magistrate appointees. However, most chief magistrates are currently conducting some form of these investigations, including a criminal history review, on applicants for magistrate positions.

For example, 97 percent of chief magistrates indicated that they investigate the criminal history of an applicant. Moreover, all chief magistrates in favor of background investigations indicated that a finding of a previous felony conviction should result in the automatic disqualification of a candidate for magistrate appointment. Yet, without uniform guidelines, the current background investigation and criminal history review process could vary from district to district.

While an expanded background investigation is appropriate, it does not appear that the policy should include all aspects of background investigations conducted for law

enforcement officers. For example, §15.1-131.8 of the *Code* requires that a candidate for selection as a law enforcement officer may “not have produced a positive result on a pre-employment drug screening, if such screening is required by the hiring law-enforcement agency or jail”

Staff in the Department of Criminal Justice Services (DCJS) and the Department of State Police stated that pre-employment drug screenings are expensive ventures for participating agencies. DCJS staff indicated that these tests generally cost the participating agencies anywhere from \$25 to \$35 to administer for each candidate. As a result, the cost effectiveness of requiring this as part of the magistrate background investigation is questionable. Furthermore, if local magistrate appointing authorities felt that such tests were necessary for applicants in their districts, they could require that they be conducted as part of the appointment process.

Given the numerous factors that go into background investigations, OES should develop policies for approval by the Committee on District Courts requiring chief magistrates to conduct a background investigation and criminal history review of magistrate applicants. At a minimum, the policies should require chief magistrates and magistrate appointing authorities to conduct a criminal history review. In addition to ensuring that the background of applicants are thoroughly reviewed, these policies should also aid in bringing uniformity to the magistrate appointment process.

***Recommendation (2).* The Office of the Executive Secretary of the Supreme Court should develop, for approval by the Committee on District Courts, written guidelines addressing the conduct of background investigations on candidates for appointment as magistrates and factors that should result in disqualification. These guidelines should be based, in part, on the background investigation requirements for law enforcement officers in the Commonwealth and include a requirement that a criminal history review be conducted.**

EVALUATION OF THE MAGISTRATE SYSTEM COMPENSATION STRUCTURE

One of the primary functions of any compensation and classification structure is to enable organizations to hire and retain qualified personnel. A compensation and classification structure that is not able to attract and retain personnel may lead to instability in service provision, excessive recruiting and training costs, and morale problems. HJR 403 requires this current review to determine whether the current compensation structure is adequate to attract and retain qualified magistrates.

Analysis conducted for this study indicates that hiring and retaining personnel in part-time magistrate positions is difficult due in part to inadequate compensation relative to full-time magistrate positions. Compared to a position classified as one full-time equivalent (FTE) position, positions classified as part-time, or less than one FTE

position, perform relatively the same amount of work per hour. Yet, the compensation for these part-time positions is not equal on a proportional basis to the compensation provided a full-time (one FTE) class V magistrate. As a result, a salary adjustment is warranted for part-time magistrates to eliminate the salary disparity.

In addition, the entire magistrate compensation structure requires an adjustment. A 1990 Department of Personnel and Training (DPT) study determined that magistrate compensation was less than that for a comparable position in the executive branch. As a result, a one-time adjustment is needed to bring the magistrate compensation structure in line with the compensation structure of hearing officers in the executive branch. Finally, the practice of allowing local salary supplements to State-funded magistrate compensation should be discontinued to ensure consistency and mitigate the potential negative impact on morale.

Hiring and Retaining Part-Time Magistrates Is Difficult

Difficulty in hiring and retaining part-time magistrates appears to be in part the result of inadequate compensation policies for part-time magistrates. While personnel turnover in the magistrate system does not differ much from that of the statewide district court system, turnover in part-time magistrate positions is significantly higher than for full-time positions. This is an indication that the compensation structure is not facilitating the hiring and retention of part-time personnel. As a result, this has likely placed the magistrate system at a competitive disadvantage in hiring and retaining part-time magistrates.

Hiring Part-time Magistrates Appears to Be More Difficult than for Full-Time Magistrates. While it may be difficult to hire qualified part-time magistrates due to factors other than pay, the perceived inadequacy of the available salary can further intensify recruitment and hiring problems for these positions. In the magistrate system, the compensation of magistrates in part-time positions appears to be a significant factor in the difficulty in hiring part-time magistrates.

As illustrated in Table 7, the vast majority of chief magistrates with part-time magistrates in their districts reported that salary levels have negatively impacted their ability to hire qualified individuals to fill part-time positions. The challenge faced by several chief magistrates in hiring part-time magistrates under the current compensation structure was also noted during JLARC site visits and follow-up telephone interviews. For example:

One chief magistrate reported that he recruits applicants with other outside income in order to fill part-time positions. As a result, these individuals will not have to rely solely on the magistrate pay. This chief magistrate further noted that increased pay for part-time magistrates would make the availability aspect of the position less problematic.

Table 7

Chief Magistrate Responses to Effect of State Salary Levels on Hiring Part-time Magistrates

Statement: State salary levels for magistrates have negatively impacted my district's ability to hire qualified part-time magistrates.

Strongly Agree %	Agree %	Disagree %	Strongly Disagree %	Number of Respondents
52	35	9	4	23

Note: Percentages may not total 100 due to rounding.

Source: JLARC staff interviews of chief magistrates, June 1996.

Another chief magistrate reported running classified advertisements for part-time magistrates two or three times at \$300 per ad before developing what she considers to be an acceptable applicant pool. On the other hand, this chief magistrate noted that it is not unrealistic to expect to receive 45 well qualified applicants, some who will have masters or law degrees, for a full-time magistrate's position.

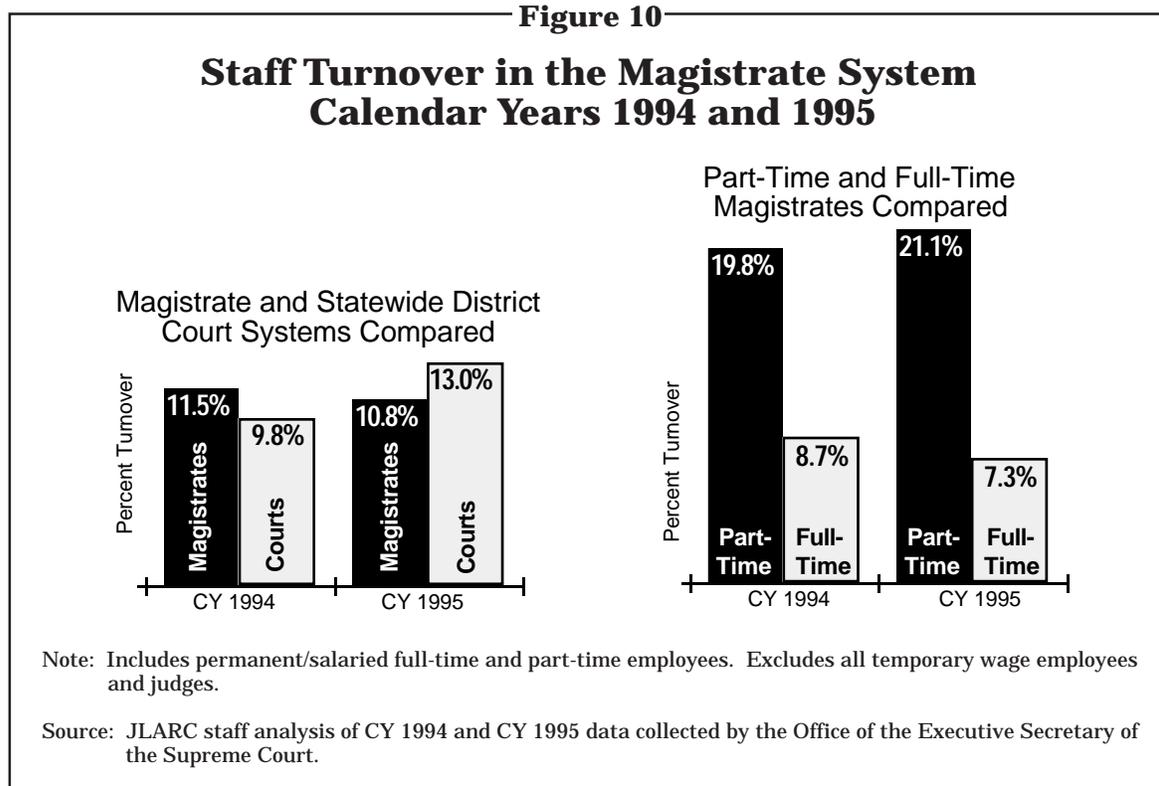
* * *

One chief magistrate noted having difficulty recruiting applicants for part-time magistrate positions because these positions require too much time and training for the compensation provided. In response to a recruitment effort for a class II magistrate, this chief magistrate received only three applications.

In addition, the current part-time salary levels may hinder efforts to recruit individuals for part-time positions with bachelor's degrees. While the current part-time salary structure may be more acceptable for individuals without a bachelor's degree, it will likely be less attractive for individuals with a bachelor's degree.

Turnover in Part-time Magistrate Positions Is Higher than Full-Time Positions. Another potential measure of the effectiveness of the salary structure for part-time magistrates is the extent to which qualified staff are retained. By that measure, personnel turnover in the magistrate system did not differ significantly from that of the statewide district court system during CY 1994 and CY 1995 when it averaged about 11 percent for those two years combined.

However, analyzing turnover by these broad groupings masks higher turnover rates for the groups classified as part-time. As highlighted in Figure 10, during CY 1994 and CY 1995, turnover in part-time class I - III magistrate positions differed substan-



tially from personnel in positions OES considers to be full-time. In CY 1995, turnover in part-time magistrate positions was almost three times higher than the rate for full-time positions.

Moreover, chief magistrates have indicated that retaining personnel in part-time magistrate positions is difficult. For example, 70 percent of the chief magistrates with part-time magistrates in their districts reported that salary levels have negatively impacted their ability to retain qualified and experienced part-time magistrates. This is further highlighted by the following example:

In one large, full-time urban office, a part-time magistrate who had just completed his required certification training, noted in his resignation letter to the chief magistrate that “[a]fter continuing reassessment on my part, I feel this decision is in my best interest as well as the magistrate system. The continuing fluctuation of work hours, low pay, and often intense periods of detail work brought me to the realization that this is not a position I want to continue. The expectations of the position do not equate with the pay nor the demands put on part-time magistrates for schedule adjustments and requirements.”

Further, there are some districts with a number of part-time magistrates who also served as former justices of the peace, have many years of experience, and provide a great deal of continuity to their local offices and districts. These experienced part-time

magistrates will likely be retiring from their positions in the relatively near future and will need to be replaced with new part-time magistrates.

One chief magistrate expressed concern that many of the new applicants are unwilling to make the same sacrifices as the more experienced, part-time magistrates and are less inclined to work in these positions for the current pay. Developing an appropriate compensation structure for part-time magistrates should help address this concern.

However, it must be noted that the on-call or availability nature of the work of magistrates may also be a factor that contributes to the turnover in part-time positions. Part-time magistrates working on-call or on an availability basis are expected to respond to the office within 20 minutes of being contacted by law enforcement officials. Magistrates have noted that the volume of calls and the expected response times frequently preclude part-time magistrates from engaging in many outside activities which would prevent them from responding in a timely manner. For some part-time magistrates, this situation may become untenable.

Yet, more than 56 percent of the part-time magistrates responding to a survey question regarding part-time employment reported that the flexibility of part-time work is beneficial in that it allows them to seek additional employment opportunities or pursue other interests. Reflective of that, about 51 percent of the class I - III magistrates responding to the JLARC staff survey reported holding outside employment.

Nonetheless, it appears that current compensation levels are one factor that have made it difficult for chief magistrates to hire and retain part-time magistrates in their districts. As a result, magistrate turnover rates in these part-time positions is relatively high. This makes it more difficult for chief magistrates to ensure consistent office coverage at all times. At times, this could negatively impact services provided to law enforcement officials and citizens. Moreover, morale among magistrates may be affected because they have to work more hours to cover for unfilled part-time position openings.

Salary Disparity Exists Between Part-Time and Full-Time Magistrates

The current magistrate system compensation structure contains a salary disparity between part-time and full-time magistrate classifications. Compared to a class V magistrate which is classified as one FTE position, individuals in part-time positions perform relatively the same amount of work per hour. Yet, the compensation of these part-time positions is not equal on a FTE basis to the compensation provided to a class V magistrate. As a result, an adjustment is necessary to proportionally align the salaries of class I - IV magistrates with a class V magistrate.

Part-time Magistrate Salary Not Proportional to Full-Time Magistrate Salary. Currently there is no proportional alignment between the salaries of positions classified as less than one FTE with those magistrate positions classified as one FTE. For example, it is reasonable to expect that the starting salary of a class I magistrate (.2 FTE)

would be compensated at 20 percent of the starting salary of a class V (one FTE) magistrate. However, as illustrated in Table 8, there is a substantial difference between current starting salary levels and expected salary based on the FTE classifications. (A complete listing of the salary scales for all of the magistrate classifications is provided in Appendix F).

Table 8

**Starting Salaries of Class I - IV Magistrates
Compared to Class V Magistrate**

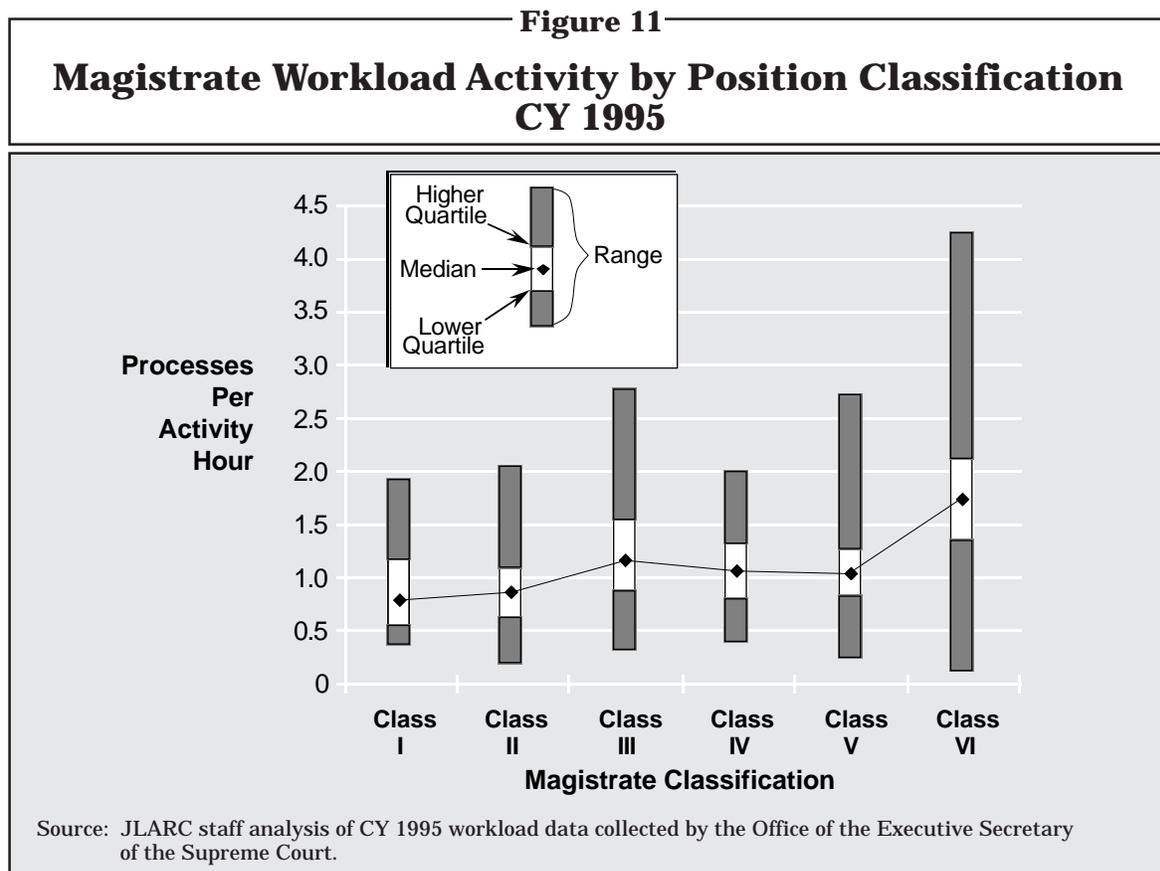
Classification	FTE Classification	Current Starting Salary	Expected Starting Salary Based on FTE Classification	Difference
Magistrate I	.2	\$2,834	\$4,319	(\$1,485)
Magistrate II	.4	6,233	8,638	(2,405)
Magistrate III	.6	10,356	12,957	(2,601)
Magistrate IV	.8	13,939	17,276	(3,337)
Magistrate V	1.0	21,595	21,595	0

Source: JLARC staff analysis of the magistrate salary and classification plan, December 1995.

OES staff acknowledges the salary disparity between part-time and full-time magistrates. Moreover, they attempt to adjust for this disparity when circumstances justify either reclassifying a part-time magistrate to the next higher classification or upgrading a class IV to a class V magistrate. When reclassifying magistrates under these circumstances, OES staff increase the magistrate's salary by a minimum of 20 percent. This is done even if the starting salary of the new classification does not result in a 20 percent increase. While OES' attempt to account for this salary disparity is commendable, it does not entirely rectify the salary disparity between part-time and full-time magistrates or benefit those magistrates who are not reclassified.

Part-time Magistrates Do the Same Amount of Work Per Hour as Full-Time Magistrates. Although part-time magistrates obviously work fewer hours than full-time magistrates, it is important for compensation purposes to determine to what extent part-time and full-time magistrates do similar amounts of work. JLARC staff analysis reveals that there is relatively little difference in the number of processes issued per activity hour by class I - IV magistrates and class V magistrates. Because class I - V magistrates generally issue the same number of processes per activity hour, the salary disparity between part-time and full-time magistrates violates the concept of "equal pay for equal work."

As depicted in Figure 11, the analysis reveals that the median number of processes issued per activity hour is very similar for class I - V magistrates. Moreover, the range of processes per activity hour for these positions is also similar. The median



number of processes per activity hour for these five classes as a group is one process per activity hour.

In contrast, the median number for class VI magistrates is about 1.7 processes per activity hour. The likely reason for the difference in processes per activity hour between class I - V magistrates and class VI magistrates is that the latter predominantly work on a shift basis in full-time offices. These offices typically generate a higher volume of processes per activity hour due to the larger workload.

Thus, analysis of workload shows that class I - IV magistrates and class V magistrates do similar amounts of work per hour in the office. As a result, it is reasonable to expect compensation policies for these two groups, on an FTE basis, to reflect the fact that they do relatively the same amount of work in terms of processes issued per activity hour.

Cost of Eliminating the Salary Disparity Between Part-time and Full-Time Magistrates. Reflective of the fact that class I - IV magistrates issue relatively the same number of processes per activity hour, a salary adjustment is warranted for class I - IV magistrates. The purpose of the salary adjustment is to compensate these classes of magistrates proportionally to a class V magistrate. The cost to address the salary disparity between class I - IV magistrates and class V magistrates based on FY

1996 salary data would be about \$607,000. Further, the cost of additional fringe benefits would be about \$77,000. As a result, the total cost to the State of eliminating this salary disparity would be about \$684,000.

Recommendation (3). The General Assembly may wish to provide additional funding for the magistrate system to eliminate the salary disparity between class I - IV magistrates and class V magistrates.

Entire Magistrate Compensation Structure Requires an Adjustment

In addition to eliminating the salary disparity between part-time and full-time magistrates, an additional systemwide disparity exists in the magistrate system compensation structure. A 1990 DPT study concluded that the magistrate system compensation plan was below that for comparable positions in the executive branch. It appears that OES' approach of comparing the duties and compensation of magistrates with hearing officers in the executive branch is still valid. As a result, a one-time salary adjustment is warranted to align the compensation of magistrates with hearing officers in the executive branch.

Significant Changes Have Been Made to the Magistrate Compensation Structure. OES has made several changes to the magistrate system compensation structure in an attempt to make salaries more competitive and address what they considered to be high turnover in magistrate positions. In 1988, the number of steps per magistrate class was increased from six to seven, resulting in an increase in the spread between the minimum and maximum salary from 34 to 41 percent.

This change was adopted as a mechanism to reward longevity in the magistrate position due to the recognition that magistrates had little room for advancement. In 1993, the State pay-for-performance plan was implemented for the magistrate system. To effectuate this plan, the number of steps per magistrate class was increased from seven to 18 and further increased to 20 in 1994. A northern Virginia salary differential is also provided for magistrates and chief magistrates working in judicial districts 17, 18, 19, 31, and Loudoun County. (The salary scales for all magistrate classifications in these offices is provided in Appendix G).

OES Has Compared Magistrates to Executive Branch Hearing Officers for Pay Purposes. Due to the unique nature of magistrate duties, OES has had difficulty in finding positions comparable to magistrates for use in salary studies. At one time, OES staff reported that magistrate compensation was compared to the compensation of law enforcement officers, but this approach was abandoned due to the recognition that magistrate duties were not sufficiently similar for salary comparison purposes. The primary distinction was that magistrates do not face the same physical danger in the conduct of their duties as do law enforcement officers.

Further, OES staff stated that no other judicial branch personnel perform duties which are sufficiently similar to those of magistrates for salary comparison

purposes. As a result, OES concluded that magistrate compensation should be tied to the compensation of other quasi-judicial officers like hearing officers in the executive branch. Because of the need to make the comparison to positions in the executive branch, OES requested that DPT perform a salary review for the magistrate system.

OES' Approach to Evaluating Magistrate Compensation Is Appropriate. As noted earlier, OES requested that DPT compare the magistrate and chief magistrate class specifications with those of hearing officers for the purposes of internal alignment. An internal alignment study compares the relationship of classes to one another, with the goal in this case to align the compensation of magistrates and chief magistrates with the compensation of hearing officers in the executive branch. To effect the review, OES developed new class specifications for magistrates and chief magistrates to match the form used by DPT.

DPT's internal alignment study supported executive branch pay grade 10 for the magistrate class. The magistrate class rated stronger than the hearing officer/corrections inmate class (pay grade 9) and lower than the hearing officer/unemployment compensation class (pay grade 11), based on analysis and comparison of seven factors. The seven factors for the analysis included scope of authority, supervision given, supervision received, personal contacts, complexity of work, impact of actions, and knowledge, skills, and abilities. As a result, DPT recommended placing the magistrates in the equivalent of pay grade 10 for compensation purposes.

While the DPT study did not find any hearing officer class specifications with supervisory authority to compare with the chief magistrate class, the study supported executive branch pay grade 12 for chief magistrates. This conclusion was based on aligning the chief magistrate class with the magistrate class after a comparative analysis of the seven factors noted earlier. DPT staff reported that while it is preferable to locate and use comparable classes for this analysis, it is not unusual to rely on alignment when comparable classes cannot be found. As a result, DPT recommended alignment of the chief magistrate classification with executive branch pay grade 12, which is two pay grades higher than the pay grade 10 recommended for the magistrate class.

The DPT study conducted in 1990 appears to be valid today. DPT staff reported that there have been no changes to their methodology since the internal alignment study was conducted. While the requirement for a bachelor's degree or "equivalent experience" was added in 1995 as an additional requirement for appointment as a magistrate or chief magistrate, DPT staff reported that the educational requirement is only one factor of many in determining appropriate compensation levels. Further, DPT always uses a disclaimer in class specifications for the educational requirement which allows substituting an equivalent combination of training and experience.

Magistrate Salary Structure Still Requires an Adjustment. Despite the 1990 finding that magistrate compensation trailed pay grade 10 hearing officers and chief magistrate compensation trailed pay grade 12 positions, the magistrate compensation structure still trails that of these two executive branch pay grades. OES staff have

submitted budget requests for a five percent increase in the salaries of all magistrates to generally achieve alignment with hearing officers in the executive branch. However, the disparity still exists because funding for the five percent increase has not been provided.

While the difference between magistrates and the applicable executive branch positions varies depending on the step in the magistrate salary scale, OES supports an across-the-board increase in a desire to treat all magistrates similarly and to reflect the fact that magistrates are required to work on-call, nights, and week-ends without receiving a shift or on-call salary differential. OES' request of a five percent salary scale adjustment for all magistrates still appears valid.

Cost of One-Time Adjustment for the Entire Magistrate System Compensation Structure. This review indicates that the one-time salary adjustment of five percent requested by OES for the magistrate system appears warranted to bring about alignment with comparable positions in the executive branch. The cost of this one-time salary adjustment for all magistrates and chief magistrates based on FY 1996 salary data and including the disparity adjustment for part-time magistrates would be about \$524,000. Further, the cost of additional fringe benefits associated with this salary increase would be about \$87,000. As a result, the total cost to the State of funding this one-time salary adjustment would be about \$611,000.

Recommendation (4). **The General Assembly may wish to provide additional funding for the magistrate system to enable the magistrate system compensation structure to achieve alignment with comparable positions in the executive branch.**

Local Salary Supplement Option for Magistrates Should Be Discontinued

While magistrates are considered State employees, the 1995 General Assembly amended the *Code* to allow the governing body of any city or county to add to the fixed compensation of magistrates. The only requirement is that the amount appropriated cannot exceed 50 percent of the fixed magistrate compensation funded by the State.

Allowing localities to supplement the salary of magistrates could create a number of negative and likely unintended consequences. First, localities will be placed in the difficult position of having to approve or deny salary supplements for State employees. Second, morale among the magistrates could be negatively impacted. Finally, local salary supplements could have the appearance of compromising magistrate neutrality and objectivity.

Magistrates Are State Employees. The State assumed responsibility for fully compensating magistrates in 1974 when the system was established to replace justices of the peace. The State's assumption of this responsibility has brought about significant uniformity in magistrate compensation across the Commonwealth, as magistrate compensation is based on a standard salary and classification plan administered by OES.

Moreover, the *Code of Virginia* prohibits judges and staff in the statewide district court system from receiving local salary supplements. In fact, most State employees are ineligible for local salary supplements. The only exceptions to this according to DPT staff are: (1) state employees of certain state and local health departments, (2) employees of state mental health clinics, and (3) county extension agents.

Further, this provision places localities in the difficult position of having to approve or deny requests for these magistrate salary supplements. In addition, local officials have stated that it is not clear how the local supplements would be administered. Finally, requests by magistrates for a local salary supplement could lead to requests from other organizations such as constitutional officers.

Magistrate Morale May Be Negatively Impacted. Another unintended consequence of local salary supplements could be the negative impact on magistrate morale. For example, some chief magistrates noted that they were either hesitant or unwilling to assist magistrates in preparing requests for local salary supplements since they believe the State should take full responsibility for compensating magistrates. Without the support of the chief magistrate, it may be difficult for local magistrates to individually pursue this option for increasing their compensation, which could also impact districtwide morale.

Further, magistrate morale may be negatively impacted when some magistrates receive local salary supplements and others do not. Not all localities have the same desire or ability to supplement magistrate compensation. For example:

One chief magistrate reported morale problems in his district since only one of the counties in his district is supplementing magistrates' salaries. The magistrates not receiving a local salary supplement see themselves as performing the same type and amount of work as those magistrates receiving the supplement, and wonder why they are not being compensated similarly.

As a result, salary inequities between local offices in the same judicial district or between statewide judicial districts exist.

For example, the magistrates serving Lee County in district 30 reported on the JLARC staff survey that they receive a local salary supplement. However, none of the magistrates in the two remaining localities in the district reported receiving a local supplement. This situation could cause significant morale problems for magistrates in the other localities and also violates the concept of "equal pay for equal work."

Local Salary Supplements Could Have the Appearance of Compromising Magistrate Objectivity and Neutrality. The salaried compensation of magistrates by the State replaced the justices of the peace fee-based compensation system. There is some concern that allowing localities to supplement State-funded magistrate compensation could lead to some of the same problems that were present in the fee-based

compensation system of the justice of the peace system. The potential for perceived interference with magistrate objectivity and neutrality when localities supplement magistrate salaries was advanced by some chief magistrates. For example:

A chief magistrate reported that she was not in favor of the local salary supplements because receiving local pay could lead to conflict or pressures from local officials to do things a certain way. She also noted that the whole issue of the local salary supplement could lead the system back to the justice of the peace days.

* * *

A chief magistrate who had one locality in his district supplementing magistrate salaries noted that some members of the local governing body wondered what the magistrates would be doing for the locality since they were now receiving a local salary supplement.

As objective decision-makers, magistrates are considered independent of the local law enforcement community, and are not subject to any local control. On the other hand, local law enforcement officials are often viewed as having strong ties with local government. As a result, the potential exists for those localities' providing salary supplements to exert pressure on the magistrates' office to render decisions on warrants in their favor, with the threat of withholding the salary supplement as leverage. This may also place localities in an awkward position as well, forcing them to side either with the local law enforcement community or the magistrates' office. Clearly, either situation could compromise the magistrates' current objective decision-making process or give the appearance of impropriety.

The State's assumption of full compensation for magistrates has brought about a great deal of uniformity in the implementation of the magistrate compensation structure. While magistrates are considered State employees and are a part of the statewide district court system, they are the only personnel eligible to receive local salary supplements. Continuing to allow localities to supplement magistrate compensation will likely result in salary inequities which may negatively impact the morale of the system and potentially give the appearance of compromising magistrate objectivity and neutrality.

***Recommendation (5).* The General Assembly may wish to consider amending §14.1-44.2 of the Code of Virginia to eliminate the option allowing localities to supplement State-funded magistrate compensation.**

III. Magistrate Videoconferencing

Both SJR 374 and HJR 532 direct JLARC to evaluate the feasibility of incorporating the technology of videoconferencing into Virginia's magistrate system. Videoconferencing, which is currently used or soon to be used by magistrates in six judicial districts, has become the subject of substantial interest and discussion. This interest is due in part to advances in technology which have enhanced the potential for applying videoconferencing to the magistrate system with less effort and cost. Moreover, it may be possible to achieve significant benefits from the use of this technology.

The possible applications of this technology to the magistrate system has been identified and supported by the State's judicial system. Despite this support, the State's judicial system has not taken an active role in guiding the application of technology to the magistrate system. Because the magistrate system is a State system and the use of videoconferencing will clearly impact it, a more active role by the State's judicial system in this area is necessary to facilitate and guide implementation of this technology.

For example, several factors will need to be addressed before systematic application of this technology should be considered. The lack of a State role that is designed to minimize possible problems in the implementation of this technology could result in the State's magistrate and judicial systems not maximizing potential benefits like staffing reductions and improved access to services. Moreover, it could lead to the development of a fragmented and non-compatible system that has little or no future statewide application.

OVERVIEW OF MAGISTRATE VIDEOCONFERENCING

The concept of magistrate videoconferencing has been an issue of discussion among magistrates and State judicial officials for a number of years. As noted earlier, six localities have, or soon will be utilizing, this technology to some degree to provide some or all magistrate-related services. However, despite the fact that the magistrates are part of the State's court system, the types of systems that are currently in operation vary significantly.

Moreover, despite the potential benefits that might accrue from using this technology, the State's court system has had a very limited role in promoting or developing this technology for application to the magistrate system. At the State level, limited standards have been developed regarding the use of these systems. Yet, most of the design and application development has occurred at the local level.

State Judicial System Has Supported Use of Magistrate Videoconferencing

Virginia's judicial system has indicated its support for adapting the technology of videoconferencing to the magistrate system. For example, the 1989 report of the Commission on the Future of Virginia's Judicial System recommended that "the establishment of regional offices in low volume areas or the use of interactive telecommunication systems may permit better use of magistrate services."

In addition, the 1990 *Virginia State of the Judiciary Report* states that, OES had been involved in a study to "improve the delivery of magistrate services." The report also stated that the study had focused on improving the effectiveness and efficiency of the services provided by magistrates and further indicated that:

One solution which shows great promise involves allowing appearances before a magistrate from remote locations. This would require the use of electronic video and audio communications as well as the use of facsimile process for transmitting the paperwork. Such an operation would enable the judicial system to establish regional magistrate offices staffed by full-time personnel to serve areas as opposed to the current system which has many single-localities being serviced by part-time magistrates.

The issue of magistrate videoconferencing was also a subject of an OES sponsored chief magistrate study group which proposed procedures for implementing the technology and developed potential evaluation guidelines.

Finally, the State judicial system's 1994-96 strategic plan also addresses the issue of magistrate videoconferencing. One of the objectives of the strategic plan is to expand and improve magistrate services. One portion of the proposed approach for achieving that goal states:

As an additional means for increasing access to magistrate services, implement interactive, two-way telecommunications systems on an as-needed basis.

Clearly, the State judiciary has recognized the potential for applying videoconferencing technology to the magistrate system.

Videoconferencing Has Been Implemented in Six Judicial Districts

Chief magistrates in six districts reported that they have implemented, or are implementing some form of videoconferencing that is used by the assigned magistrates. The judicial districts and the affected localities are the:

- first judicial district (City of Chesapeake),
- fourth judicial district (City of Norfolk),
- seventh judicial district (City of Newport News),
- sixteenth judicial district (joint office of the City of Charlottesville and Albemarle County),
- nineteenth judicial district (Fairfax County), and
- twenty-seventh judicial district (Montgomery County and the Town of Blacksburg).

It is important to note that these systems serve either one locality or a joint office, and are not linked to a magistrate's office in another locality. Moreover, none of the systems are in use in a rural county. The system in operation in Montgomery County primarily serves the Town of Blacksburg's police department, which is located within the county. Fairfax County's videoconferencing system is connected between a satellite magistrate's office and a local police precinct in another section of the county.

The types of systems that have been installed vary significantly as well. For example, in Montgomery County and the Town of Blacksburg, the video system is a dedicated unit that utilizes fiber optics for audio and video transmission. The necessary documents are completed off-line from the videoconferencing system and faxed between the two offices.

In contrast, in Fairfax County, the video system is a Windows-based application on a personal computer (PC) which allows police to transmit the required data to the magistrate's office on-line. Further, the system enables magistrates to complete the necessary forms on-line and utilizes electronic magistrate signatures on the forms. The forms are then printed out at the remote terminal in the police station.

Some Standards Regarding Videoconferencing Have Been Developed

The *Code of Virginia* was amended by the General Assembly in 1991 to establish standards for the use of two-way electronic video and audio communication systems. At a minimum, any videoconferencing technology used in the magistrate system must:

- allow the individuals communicating to simultaneously see and speak to one another;
- ensure that the signal's transmission is live or real time; and

- ensure that the audio and video transmission is “secure from interception through lawful means by anyone other than the persons communicating.”

However, the *Code* also states that videoconferencing systems used are subject to “any other specifications as may be promulgated by the Chief Justice of the Supreme Court.”

POTENTIAL BENEFITS, OBSTACLES, AND COSTS OF VIDEOCONFERENCING

This review has identified a number of potential benefits that might be attributable to the use of videoconferencing. The benefits include improved access to magistrate services, potential reductions in the number of magistrates, and improved manageability of the magistrate system. The majority of chief magistrates across the State also identified many of the same benefits.

At the same time, it must be noted that there are a number of potential obstacles that could hinder the uniform application of this technology. The lack of financial support is clearly the predominant factor. Directly related to that issue is the potential cost of acquiring the necessary videoconferencing hardware statewide which is estimated to be at least \$2.5 million. In addition, other non-financial factors were also identified including, the willingness of the judicial system and law enforcement officials to support and use the system as well as other operational concerns.

Potential Benefits Attributable to the Use of Videoconferencing in the Magistrate System

A number of benefits that might be attributable to the use of videoconferencing in the magistrate system have been identified. All chief magistrates were asked on the JLARC staff survey to identify potential benefits that might be realized through the use of videoconferencing in their district. As highlighted in Table 9, there were a number of important benefits identified by chief magistrates regarding the use of magistrate videoconferencing. These benefits include improved access to magistrate services, reductions in the number of magistrates, and improved manageability of the magistrate system.

Provide Full-Time Access to Magistrate Services. As identified earlier, the majority of chief magistrates responding to the survey identified improved access to magistrate services as one benefit of videoconferencing. Clearly, in offices where videoconferencing equipment is available to local police or citizens, the need to drive some distance to the main magistrate’s office is reduced or even eliminated.

Also, since the duty magistrate would no longer need to be summoned to come into the office to provide his or her services, any waiting time for law enforcement officials or citizens would be eliminated. With a videoconferencing system, there would only be

Table 9

Potential Benefits from Magistrate Videoconferencing

Potential Benefits of Videoconferencing	Percentage of Chief Magistrates
Increases access to magistrates by law enforcement officials	71%
Increases access to magistrates by local citizens	58
Improves manageability of district's magistrate system	55
Reduces the need for additional magistrates	52

Source: JLARC staff analysis of chief magistrate surveys, April 1996.

a need to ensure continuous magistrate coverage in the main office to which the videoconferencing equipment in the remote office was linked. As a result, individuals served by the remote office would have access to services provided through videoconferencing by full-time magistrates.

Videoconferencing also provides major benefits to law enforcement officials. In Fairfax County, there has been a positive impact on local police operations. For example, police officers no longer have to drive the approximately 16 miles each way to the magistrate's office to conduct business. In addition to the distance, the traffic congestion in Northern Virginia will often lengthen the time involved commuting between offices.

Law enforcement officials noted that the time required to complete many of the transactions police conduct with magistrates can be reduced by about 50 percent. In October 1995, the Fairfax County police department reported conducting more than 720 transactions with the magistrate by videoconferencing rather than by commuting to the office of the magistrate. Clearly, police were able to spend more time on patrol instead of commuting to or from the magistrate's office.

Reduced Need for Additional Magistrate Staff. One of the most recognizable benefits attributable to magistrate videoconferencing is the potential for reducing the need for additional magistrates. In theory, in smaller offices, the use of magistrate videoconferencing could either entirely or almost entirely replace magistrates. Yet, in the systems currently in place, reductions in staff were not achieved.

However, in a district with magistrate videoconferencing, the chief magistrate noted that the videoconferencing equipment enabled them to supply 24 hour magistrate services to a satellite office in a police precinct when additional magistrates were not available. For example:

The City of Chesapeake decided to reactivate a local police precinct that was a substantial distance away as well as separated from the local government center and magistrate services by the Elizabeth River. It would require police to drive about 45 minutes to the government center

for magistrate services. As a result, police could be off patrol for two hours while obtaining magistrate services. The State was unable to provide the necessary magistrate positions to staff the precinct office. To address this situation, a videoconferencing system between the precinct station and the main magistrate office was installed.

In this particular case, no magistrate-related cost savings were achieved, but potential future staffing costs may have been avoided due to the use of videoconferencing.

In addition, the majority of any direct savings associated with the use of videoconferencing will likely come from implementation between offices that serve different localities. As noted earlier, the magistrate videoconferencing systems in use currently do not provide magistrate services outside of one jurisdiction or local office. But, if the Montgomery County magistrate's office were linked to the magistrate's office in Giles County, a reduction in the number of magistrates serving Giles County might be possible.

Factors Potentially Limiting the Application of Videoconferencing in the Magistrate System

While a number of benefits that might accrue through the use of magistrate videoconferencing have been identified, there are several major factors that may potentially limit the use of this technology that will need to be addressed before implementation. While the lack of financial support was one factor, other non-financial factors were also identified. These non-financial factors include the willingness of the judicial system and law enforcement officials to support and use the system as well as other operational concerns.

Lack of Financial Support. All chief magistrates were asked on the JLARC staff survey to identify factors that were preventing them from establishing videoconferencing in their districts. The primary factor identified by more than 70 percent of the chief magistrates who do not have videoconferencing systems was the lack of financial support to purchase and operate the system.

In terms of financing the installation and operation of videoconferencing equipment, OES' position is that this type of equipment is a local government responsibility to provide and operate. As stated by OES, "Section 19.2-48.1 places the responsibilities upon localities to furnish any equipment necessary for the efficient operation of the office."

For a local government, unless the potential benefits are clearly positive and directly impact local citizens, there is little or no reason to provide the necessary funding, especially since magistrates are funded by the State. In localities where videoconferencing has been utilized, that link with the potential benefits was probably more clearly established.

Reservations Have Been Expressed by Judiciary and Law Enforcement Officials. The vast majority of chief magistrates responding to the JLARC staff survey indicated that local judicial officials or local law enforcement officials were not preventing the establishment of videoconferencing in their districts. However, other research indicates that issues related to the use of this technology could raise concerns from these two important groups.

For example, a chief magistrate in one judicial district was actively exploring the use of videoconferencing in some localities in that district. One local judge in that district noted that:

The plan will take magistrates away from [this] county which has always had them and substitute a video system in their place I am concerned about a possible adverse affect upon the efficiency of the court system and its employees.

Another judge expressed similar concerns but also noted that he was concerned that a person who was arrested would in effect not appear before a magistrate if videoconferencing was utilized.

Local law enforcement officials may also have some uneasiness about the expansion of magistrate videoconferencing. This is especially important when most of the videoconferencing systems used to-date have been placed in local law enforcement offices. In order for videoconferencing to be implemented successfully, the concerns of the law enforcement community will need to be addressed. For example, one sheriff expressed concerns about:

Who would be taking care of the system when a small department such as ourselves had only one dispatcher and one jailer on duty at all times, and they couldn't leave their posts to see to the concerns of the video magistrate When a citizen of [this locality] wants to obtain a criminal warrant, who will be responsible to have someone available to show him or her how to operate the video system?

This last issue regarding citizen access to this technology has surfaced in some magistrate videoconferencing systems. In Fairfax County, citizens' access to magistrates through the video magistrate is "at the discretion of the [police department] because the police must accompany the citizen into the secured area."

Other Operational Issues. In addition to the factors highlighted above, some other operational issues will need to be addressed. For example, a method for addressing instances in which individuals appearing before a video magistrate post a cash bond will need to be developed. A number of potential alternatives have been proposed by OES. However, OES also noted that any remaining issues related to the posting of cash bond by individuals appearing before a video magistrate "would hopefully be minimal and could be dealt with as seems reasonable at the time." This issue as well as others will need to be addressed when considering expansion of this technology.

Potential Costs of Applying Magistrate Videoconferencing Statewide

Both SJR 374 and HJR 532 require JLARC to estimate the fiscal impact of applying this technology statewide. Using the cost of some of the equipment utilized in a recent magistrate videoconferencing system, the cost statewide to simply acquire that hardware is estimated to be at least \$2.5 million. However, this estimate does not include districts that are full-time and serve only one locality.

It must be noted that this estimated cost is not reflective of the actual cost of applying this technology statewide for a number of reasons. First, this cost does not include any customized interfaces between existing systems or any programming to meet the needs of local magistrate offices. Second, no operating costs are included, and the manner in which the audio and video signals are transmitted could substantially increase the cost due to transmission and line costs. Finally, there are many types of videoconferencing technology available and the cost can vary substantially according to the type of system selected.

Type of Videoconferencing System Can Impact Cost. A primary factor that will directly impact cost is the type of system selected. For example, a formal room-based videoconferencing system could cost \$150,000. Systems classified as a rollabout can cost from \$20,000 to \$50,000. Finally, desktop videoconferencing systems which operate on a personal computer are less expensive and cost from \$5,000 to \$15,000 per unit.

Customized Interfaces or Programming Can Impact Cost. The issue of customized interfaces or programming can add to the expense of a system. For example, Fairfax County paid \$14,000 for customized programming to enhance their videoconferencing system. If one vendor supplied all of the equipment, the extent to which these types of charges apply for every system may be minimized. However, because every office is likely unique in terms of design and layout, customized programming may be required on a case-by-case basis.

Audio and Video Signal Transmission Mechanism Can Impact Cost. Moreover, the method used to transmit the audio and video signal can also significantly impact the cost. For example, the twenty-seventh judicial district evaluated expanding their existing system in 1992. Two fiber links would have been required at a one-time cost of more than \$32,000 and a monthly fee of \$280.

An option that allowed for a one-time cost of \$215 was available, but the monthly payments for ten years would have been \$740. This is in addition to the more than \$24,000 in hardware costs that would have enabled one additional magistrate office in another county to link up with the existing videoconferencing equipment in the Montgomery County magistrate's office.

JUDICIAL SYSTEM'S ROLE IN PLANNING THE APPLICATION OF THIS TECHNOLOGY SHOULD BE ENHANCED

Despite the potential benefits to the magistrate system, law enforcement officials, citizens, and the State's judicial system, there has been relatively little, if any, active participation by the State judicial system in planning and developing magistrate videoconferencing. As a result, this technology has been implemented on an *ad-hoc*, office-by-office basis. Application of this technology in this manner could inhibit any future statewide compatibility of videoconferencing systems as well as any future interfaces with the State's court system.

To address this issue, OES should assume a more active role in the development and application of videoconferencing technology in the magistrate system. More active involvement should address compatibility issues as well as the need for additional standards. In furthering this involvement, OES should also conduct formal evaluations of magistrate videoconferencing systems currently in operation in Virginia and develop a proposal for formal pilot projects involving this technology. Finally, the goal of establishing full-time regional offices in the judicial districts should be linked with the use of videoconferencing.

OES' Involvement in Developing Videoconferencing Technology Is Lacking

Despite the potential benefits that could accrue from magistrate videoconferencing, the State's judicial system has not taken an active role in either promoting or developing this technology. Absent a clear presence by the State's judicial system in this area, the technology will continue to develop on an *ad hoc* basis as it has already done with little technical or system support from the State, which could limit any statewide compatibility attempted in the future and make upgrades in technology more difficult. Moreover, because this technology can impact the court system, active involvement by OES is also necessary to ensure that integration with existing court and magistrate automated systems and among judicial districts can occur.

Increased Technical and System Support of Videoconferencing Systems Is Necessary. Because of the potential for integrating these systems both beyond the boundaries of judicial districts and with the existing magistrate and court automated systems, involvement by OES in developing and supporting this technology will likely be necessary. Issues related to the integration of the videoconferencing and the magistrate automated system and the need for a proactive support role by the State judicial system have been identified. For example:

In one local magistrate's office that had established videoconferencing, OES' review of the system noted that some OES staff, while agreeing with the concept of the technology, "had problems with the implementation of the system because . . . they went against his advice and

coordinated poorly with him before installing the system.” The report also noted that “since they did not coordinate with him, their system may very well not work when he updates the software program for the magistrate automated system.”

The chief magistrate from this district also noted the need for an interface that would enable the magistrates to simply use the information typed into the system by the police at the remote terminal without having to retype the same data. OES staff responded that complying with that specific request, because it dealt with a unique system that was not in place elsewhere, would take a significant amount of dedicated resources away from maintaining the entire magistrate automated system. Moreover, OES staff noted that if that particular type of videoconferencing system was more widespread, applying the resources necessary to develop the appropriate interface could more easily be justified.

However, absent any State level involvement with magistrate videoconferencing, OES is in a position of dealing on an *ad-hoc* basis with issues like these related to videoconferencing support. As a result, magistrate videoconferencing will likely continue to be implemented in an unstructured and unplanned manner limiting the ability of all involved to minimize the problems and maximize the benefits.

Additional Standards Regarding Videoconferencing May Be Needed. A number of different videoconferencing systems and interfaces have already been established in the magistrate system. As this technology continues to become more popular, more systems will likely be installed. However, the extent to which the particular systems differ will likely impact the potential for future statewide application as well as integration with existing court systems. As a result, some additional standards may be necessary to ensure that integration with existing systems can be achieved and that magistrates are able to properly conduct their duties.

Integration and compatibility of videoconferencing systems is important even within judicial districts. For example, local magistrate offices in the same district might not purchase the same hardware, making district-wide integration more difficult and expensive. This same scenario could exist if upgrades in technology were necessary and the original manufacturer had subsequently gone out of business or no longer supported that particular system. These scenarios could be minimized if the State judicial system took a more proactive role in administering the implementation of this technology and developing any necessary standards.

Furthermore, some magistrates in the past have expressed concern that the use of videoconferencing has the potential to reduce their ability to see “non-verbal cues” or facial expressions that would otherwise be evident in a personal interview. While some videoconferencing systems have cameras that can focus very closely to read documents like a driver’s license or have a separate document camera for that purpose, all do not have this ability. Issues like these could be more easily addressed with more active involvement by OES and the development of any necessary standards.

OES Involvement Necessary to Maximize Benefits for the State

As identified earlier, magistrate videoconferencing clearly has the potential to benefit the law enforcement community. One chief magistrate in the process of establishing a videoconferencing system in one local magistrate office noted that the needs of the local law enforcement community really drove the acquisition of that office's current system.

However, if applied properly, benefits from magistrate videoconferencing could accrue to the State as well. These benefits are primarily in the form of reduced staffing costs or reductions in the need for additional staff. Yet, if the systems are established in an unstructured manner, the State could lose the ability to benefit from reductions in staff or limits on staff growth.

A State role in implementing this technology at the magistrate level is necessary because there are other State and local agencies pursuing the adoption of this technology for their own particular applications. For example, State-operated court service units in the southwest part of the State are exploring the establishment of some type of videoconferencing system. Furthermore, some local jails are exploring the use of this technology for arraignments. Without formal involvement by OES at the State level, the potential for using some of these other networks to share system infrastructure with any magistrate videoconferencing systems would likely not be examined.

Videoconferencing in the magistrate system holds the potential for many benefits. However, without some type of structure guiding the development and application of videoconferencing technology in the magistrate system, the resulting incremental, *ad-hoc* growth could limit the State's ability to maximize any benefits. In fact, it is possible that in some instances video technology could result in increased costs to the State. To minimize these potential problems, the State judicial system needs to take a more proactive role in developing and applying this technology to the magistrate system.

State Involvement in Funding Videoconferencing Infrastructure May Also Be Necessary

As noted earlier, OES' position, based on the *Code of Virginia*, is that videoconferencing equipment is a local government responsibility to provide and operate. However, the majority of chief magistrates without a videoconferencing system indicated that the lack of financial support to purchase and operate the system was a major obstacle preventing the application of this equipment in their districts.

Other study groups have recognized potential limitations with relying on local governments to provide funding for this type of technology. For example, the 1989 report of the Commission on the Future of Virginia's Judicial System recommended that the State fully fund purchases of computer hardware, software, and video equipment. The

Commission's rationale was that despite the fact that localities were responsible for providing facilities and equipment:

Computer and video equipment are of so specialized a nature as to require uniformity and compatibility from court to court. State government should fully fund the expense of automating all courts. This commitment will not only avoid disparity among the courts but will reduce overall government expenditures through the economies of scale obtained by centralized state purchases.

Moreover, the proper application of this technology has the potential to benefit the State as well, primarily by limiting growth of personnel costs or actually reducing them.

In automating more than 100 magistrate offices with the PC-based magistrate system, OES was actively involved in the application of this technology in these offices. To provide the maximum number of offices with this system, an arrangement was made in which the locality would purchase the computer and OES would develop and install the software, develop the manuals, provide the training, and totally support the systems thereafter. OES staff noted that this cost sharing arrangement was why they have been able to automate so many local magistrates' offices. A similar approach might be considered with magistrate videoconferencing systems.

OES Should Evaluate Existing Magistrate Videoconferencing Systems

The lack of formal evaluations of the existing magistrate videoconferencing systems is one factor that has placed the State in a position of not being able to effectively coordinate the development of this technology in magistrate offices. Both the 1990 and 1991 *Virginia State of the Judiciary Reports* stated that either evaluation methods had been established or that evaluation processes had been conducted. However, any evaluation of these systems has been conducted at the local office level because OES staff reported never formally evaluating the existing systems.

Both the Commission on the Future of Virginia's Judicial System and the State judicial system's own strategic plans have supported the use of this technology. Also, the differences the current videoconferencing systems have in terms of technology and infrastructure provide an excellent opportunity for a formal evaluation of their impact on these offices, the services provided, and the benefits received. As a result, OES should formally evaluate all of the existing systems to determine:

- what the offices like and do not like about the systems and what improvements they would recommend based on their experiences,
- if they have benefited local law enforcement officials and the general public,
- whether the systems have met the needs of local judicial officials and can be linked to the automated magistrate system and other court systems, and

- the costs associated with the systems and any savings that have been realized.

To maximize the results of these evaluations, OES should consult with staff from the Department of Information Technology (DIT) who have expertise in this area. Furthermore, OES should consider contracting with a qualified technical consultant, if necessary, to conduct these evaluations.

Regardless of how the evaluations are conducted, OES should use the results to formalize its own role in administering this technology throughout the magistrate system. In addition, OES should use the results from these evaluations to determine the types of additional standards that may be needed to ensure that any future videoconferencing projects meet the needs of the magistrates, the State courts, law enforcement offices, and local citizens.

***Recommendation (6).* The Office of the Executive Secretary of the Supreme Court should conduct, or contract with a qualified consultant to conduct, a formal evaluation of the existing magistrate videoconferencing systems. At a minimum, the evaluation should address: (1) the costs and benefits attributable to the systems, (2) the perceptions of local magistrates, law enforcement officials, and citizens regarding the systems, (3) local judicial officials perceptions of the systems, and (4) the potential for using a system in a statewide implementation.**

OES-Sponsored Videoconferencing Pilot Projects Should Be Developed

To further the development of a formal role in the development and application of these systems, OES should more actively administer the implementation of this technology. In addition, OES should develop a proposal for the implementation of at least two formal State-administered magistrate videoconferencing pilot projects.

Magistrate videoconferencing should be utilized to achieve specific objectives. However, identifying the full effects of magistrate videoconferencing, and determining whether they produce the desired outcomes is difficult without formal involvement from the beginning of the development and acquisition process. Given the dynamics that are evident in all local magistrate offices, it is to be expected that in some districts the outcomes would be good or excellent. Yet, in others, the outcome or benefits may not be as intended.

To more fully gauge the effectiveness and benefits of magistrate videoconferencing in different types of offices, OES should formally pilot test magistrate videoconferencing through at least two different projects. To the extent possible, OES should propose the projects for local offices or districts that represent a different mix of offices than those currently utilizing videoconferencing in their magistrate offices.

In addition, OES should propose establishing formal pilot projects in local offices where the existing infrastructure for audio and video data transmission will

clearly support the technology. This should be done to avoid very costly infrastructure-related expenses. Individuals involved in the field of videoconferencing have noted that technology is evolving very quickly and it is only a matter of time before the necessary infrastructure for videoconferencing is more readily available almost everywhere, and likely available at a lower cost.

In developing the proposals for the pilot projects, OES should consult with the appropriate staff at DIT. DIT has a division devoted to telemedia services and has significant expertise in this area. These resources should be utilized by OES to ensure the proposals are well developed, comprehensive, and technologically sound.

OES should also ensure that the proposed pilot projects serve more than one locality and that the potential clearly exists for staffing efficiencies. Currently, none of the videoconferencing systems serves more than one city or county. OES could also consider as part of the pilot projects expanding some of the existing systems to include more than one locality. In developing its proposal, OES should actively consult with the affected local governments, law enforcement officials, local magistrate management teams, and magistrates.

***Recommendation (7).* The Office of the Executive Secretary of the Supreme Court should develop a proposal for review by the 1998 General Assembly regarding implementation of at least two magistrate videoconferencing pilot projects. The proposal should include: (1) potential locations for the pilot projects, (2) proposed financing mechanisms, (3) goals and objectives of the pilot projects, and (4) a formal evaluation component. In proposing potential sites for the pilot projects, the Office of the Executive Secretary should ensure that the projects will serve at least two localities which have existing infrastructure that will support the videoconferencing systems. To the extent possible, a rural locality should be included in the pilot projects.**

Regional Magistrate Office Concept Should Be Linked with Videoconferencing

While OES should continue to staff the magistrate system with the appropriate mix of full- and part-time offices and elevate part-time offices to full-time status where necessary, it should not focus resources on establishing a regional office in every district. Instead, the development of regional offices should be linked with the use of magistrate videoconferencing.

Conceptually, full-time regional offices that do not utilize videoconferencing might be a sound mechanism to provide improved access to services. However, focusing on establishing regional offices in every district, regardless of need and without the use of videoconferencing, has the potential to divert limited State resources from offices or localities in need of additional staff due to increasing workload or activity.

In supporting the concept of a full-time office in each district, OES has noted that support for this type of office has not been linked with the use of videoconferencing. For example:

... the Court System has continued efforts to establish a foundation for a full-time magistrate system The establishment of these full-time offices has not been tied to the audio-visual technology. The purpose has been to provide improved services so that there is always a location within the district where law enforcement or the public may find a magistrate on duty.

Reflective of this, OES requested sufficient positions to establish a full-time office in all but three districts in the 1996-98 magistrate system biennial budget submission.

Establishing a full-time office in each district would make the services through that office available to residents and law enforcement officials in the entire district. However, it is not clear whether it can be realistically assumed that citizens or law enforcement officials would travel across a number of localities in a district to utilize those services. For example:

A local law enforcement official in response to a suggestion from a chief magistrate that his office transport individuals needing magistrate services to the contiguous county for one day noted that it was "totally unreasonable to expect members of our Department . . . to transport those persons arrested all the way to [the contiguous county] to a magistrate. We truly do not have the manpower to be transporting prisoners . . . to any other jurisdiction and I am certain that other law enforcement agencies are in the same situation."

Moreover, it appears that when absolutely necessary, law enforcement officials utilize magistrate services in other localities that do not have full-time offices. For example, a sheriff interviewed by JLARC staff noted that his deputies have at times, due to the inability to utilize their county's own magistrate, taken individuals who had been arrested to a magistrate's office in another county served by part-time staff for a bond hearing.

In addition, as proposed in the 1996-98 magistrate system budget submission, the additional staff for a full-time regional office would not be offset with reductions in staff in other localities in that district. If a full-time office in each district without the link to videoconferencing is workable, then staffing efficiencies in other offices should be realized. The use of videoconferencing with a full-time regional office should help achieve some staffing efficiencies.

Finally, attempting to establish one full-time magistrate's office in each district without linking the regional office with videoconferencing or workload has the potential to divert limited resources from local offices currently in need of additional resources. For

example, attempting to establish a full-time office in a locality that, based on workload, does not warrant full-time status could impact OES' ability to establish a full-time office in another district where the workload warrants full-time status.

Recommendation (8). The Office of the Executive Secretary of the Supreme Court should not continue to request additional positions for the purpose of establishing a full-time magistrate's office in most of the judicial districts within the structure of the current system unless: (1) the office is staffed to support magistrate videoconferencing, (2) staffing efficiencies in the other offices in the districts are realized, or (3) it is certain that the full-time regional office will be routinely used by law enforcement officials from the other localities in the district.

IV. Magistrate Authority and Oversight of the System

This review also addressed the feasibility of expanding magistrate authority to include an adjudicatory and arbitration role in areas currently within the purview of the general district courts. However, a number of factors indicate that magistrate authority should not be broadened to include such functions at this time. The State's current policy is that the court system will be staffed by full-time judges licensed to practice law in the State. Expansion of magistrate duties would be inconsistent with this policy. In addition, the cost to the State and localities of eliminating identified structural impediments would likely outweigh any benefit of broadening the magistrates' scope of authority. Finally, clear support from a number of different participants in the State's judicial system is lacking.

The technical assistance and oversight provided to the magistrate system by the Office of the Executive Secretary of the Supreme Court (OES) was also addressed as part of this study. The technical assistance provided by OES was rated positively by both chief magistrates and magistrates. However, OES needs to take action to strengthen the structure and consistency of its oversight function. Strengthening the structure of the OES oversight process should enhance the consistent administration of the many functions performed by magistrates.

EXPANSION OF MAGISTRATE AUTHORITY

A potential adjudicatory and arbitration role for magistrates in areas currently within the purview of the general district courts has been raised as an issue by the study mandate and some magistrates. As justification for further expanding the scope of magistrate authority, some note that the number of duties that have been assigned to the magistrate system have increased since its establishment in 1974. While a number of new responsibilities have been assigned to the magistrate system since 1974, these additional duties have generally been consistent with magistrates' initial scope of authority or have tended to be more administrative in nature.

Furthermore, since 1974 it has been the policy of the State that Virginia's judiciary be staffed with judges who are full-time and licensed to practice law. Since most magistrates are not licensed attorneys, a judicial role would be inconsistent with current policy and State law. In addition, there are a number of structural impediments that hinder magistrate involvement in the areas currently the purview of the general district courts. There was also a lack of clear support for expanding magistrate authority from both chief magistrates and the judges interviewed for this study.

Additional Magistrate Duties Have Generally Remained Within Initial Scope of Authority

The primary duties of justices of the peace were recodified in 1974 to specify the duties of the magistrate system. Also, since 1974 several additional magistrate duties have been authorized through amendments to the *Code*. While additional duties have been added to the magistrate system since 1974, the magistrate system's scope of authority has generally not been expanded beyond the original role of providing an objective review of the facts presented by individuals and law enforcement officers.

Primary Role of Magistrates. Magistrates provide an important function for the State's judicial system. The primary role of magistrates is to provide an objective review of complaints against individuals brought by private citizens and law enforcement officials. In addition, magistrates assist the public by dispensing information on general judicial system processes and procedures. Magistrates are considered judicial officers, but they are not judges. While judges possess trial jurisdiction in the State, magistrates assist the judicial system by performing certain duties that would likely otherwise have to be performed by the courts.

Statutory Authority of Magistrates Is Limited. One of the factors that led to the establishment of the magistrate system was the concern that some justices of the peace were performing judicial functions without the necessary training, expertise, or qualifications. In contrast, magistrates may only perform those functions proscribed in the *Code of Virginia*. Some of the duties that the *Code* authorizes magistrates to perform include:

- issuing search warrants, processes of arrest, civil warrants, and subpoenas;
- admitting to bail or committing to jail all persons charged with offenses; and
- administering oaths and taking acknowledgments.

As noted earlier, since 1974 a number of other duties have been authorized for magistrates to perform through amendments to the *Code* (Table 10). However, these additional duties have not generally broadened the magistrates' scope of authority beyond that articulated in statute when the current system was established.

For example, making probable cause determinations is the central role of the magistrate in issuing search and arrest warrants. This role is also central to issuing emergency custody orders and issuing out-of-service orders. While the process of issuing emergency custody orders and out-of-service orders may involve different sets of administrative procedures, the probable cause determination remains the magistrates' central function in processing these orders.

In addition, magistrates are authorized to perform a number of activities for the court system which appear to be more administrative in nature. For example, magistrates may accept guilty pleas and collect fines for certain nontraffic offenses. However, magistrate involvement is limited to processing those violations for which a pretrial waiver of appearance, plea of guilty, and fine payment may be offered by the accused and

Table 10

Significant Duties Assigned to Magistrate System Since 1974

<u>Duties</u>	<u>Code of Virginia</u>	<u>Year Added</u>
Accept guilty pleas and collect fines and costs for certain traffic infractions	§16.1-69.40:1	1977
Accept guilty pleas and collect fines and costs for certain nontraffic offenses (certain Class 4 misdemeanors)	§16.1-69.40:2	1978 ^a
Issue temporary detention orders	§37.1-67.1	1981
Perform other acts or functions specifically authorized by law	§19.2-45	1985
Issue emergency custody orders	§37.1-67.01	1990
Issue emergency protective orders	§16.1-253.4	1992
Issue out-of-service orders prohibiting those suspected of being under the influence of alcohol from operating a commercial motor vehicle	§46.2-341.26:2-3	1992
Issue warrants and process administrative driver's license suspensions for those having a blood alcohol content above the legal limit or refusing to submit to chemical testing	§46.2-391.2	1995
Act as the available intake officer for juveniles when the judge or intake officer is not available	§16.1-248.1-256	1996
^a Duty was expanded in 1989 to include certain Class 3 misdemeanors.		
Source: JLARC staff analysis of the <i>Code of Virginia</i> and Virginia Acts of Assembly.		

accepted by the magistrate. As a result, this process does not require the magistrate to adjudicate a case or impose a penalty. Magistrates simply accept the plea and any payment of fines.

State Policy Requires that Judiciary Be Staffed with Full-Time Judges

It has been the policy of the judicial branch since 1974 that Virginia's judiciary be staffed with full-time judges. Moreover, the *Code* requires that judges be licensed attorneys. The Court System Study Commission recommended that to improve the efficiency and professionalism of Virginia's judiciary, the State court system should consist solely of full-time judges licensed to practice law in the State. This recommendation was fully implemented by 1980.

Prior to the 1974 statewide court reorganization plan, some judges apparently served part-time and some were not licensed to practice law in Virginia. The Court System Study Commission found that:

The part-time judge, whether he practices law or works in business, does not have time and is not paid to devote the time needed to be an effective jurist, to keep abreast of new developments in the law outside his locality and to concentrate his efforts on the problems of administering, staffing and improving his court.

The Commission further found that some judges were not licensed to practice law in the State, and reasoned that requiring all judges to be licensed to practice law would help provide for a more professional judiciary. Only five percent of magistrates and ten percent of chief magistrates responding to the JLARC staff survey reported having a law degree.

Structural Impediments to Broadening Magistrates' Scope of Authority Exist

A number of impediments have been identified by chief magistrates which would likely impact the ability of the magistrate system to assume an adjudicatory or arbitration role for issues currently within the purview of the general district courts. These impediments include the need for: (1) additional magistrate and administrative support staff, (2) adequate physical facilities, and (3) additional magistrate education and training. At present, the cost to the State and localities of eliminating these impediments would likely outweigh any benefit of broadening the magistrates' scope of authority in these areas.

Additional Magistrate and Administrative Support Staff Would Be Necessary. One issue that would need to be addressed before the magistrate system could address duties associated with broadened authority is the need for more magistrates and support staff. Twenty-eight of the 31 chief magistrates responding to the JLARC staff survey reported that current magistrate staffing is insufficient to absorb any increase to magistrates' scope of authority. Moreover, 76 percent of the chief magistrates reported that their district does not have enough staff to handle the system's current workload (Table 11). As a result, additional magistrates would likely be necessary for additional duties involving adjudication or arbitration.

Moreover, only one chief magistrate reported having any administrative support staff available. Yet, the majority of chief magistrates also reported that administrative support staff would be necessary for magistrates to absorb any increase to magistrates' scope of authority. For example:

One chief magistrate reported that magistrates cannot continue to do more with less without negatively impacting the quality of services. This chief magistrate further noted that increasing magistrates' scope

Table 11

Chief Magistrate Responses to Whether the District Has Adequate Staff to Handle the Current Workload

Statement: My district has an adequate number of staff to handle the current workload.

Strongly Agree %	Agree %	Disagree %	Strongly Disagree %	Number of Respondents
10	13	53	23	30

Note: Percentages may not total 100 due to rounding.

Source: JLARC staff analysis of chief magistrate surveys, April 1996.

of authority to assume additional duties would create even more paperwork and that support staff would be needed to properly handle these duties.

* * *

Another chief magistrate reported that magistrates will require administrative support staff assistance for clerical duties if magistrates' current scope of authority is broadened.

It appears that more administrative support staff would be required if magistrates were to assume a role in adjudicating or arbitrating cases. Case files would need to be managed, dockets or schedules developed, and support to administer the flow of activity would be necessary. The system cannot currently provide that level of support.

In addition, in districts where offices are staffed on an availability or as-needed basis, the extent to which these more specialized services could be provided on an as-needed basis is very questionable. Furthermore, it would be difficult for a magistrate to be conducting a hearing involving a Class three or four misdemeanor and have to put the hearing on hold while he or she responded to a request from a law enforcement official for a warrant.

Enhanced Office Facilities Would Likely Be Necessary. A more formal judicial role for magistrates would require that their current office facilities have the proper decorum for conducting adjudicatory hearings. However, 71 percent of the chief magistrates responding to the JLARC staff survey reported that current office facilities are inadequate to support additional magistrate responsibilities.

The current physical facilities used by many local magistrates lack the size, public accessibility, and decorum appropriate for broadening magistrates' scope of authority. Enhanced facilities would likely be necessary to properly serve citizens who

were before a magistrate regarding an issue involving adjudication or arbitration. For example:

One local magistrate's office consisted of a small room about 10' by 12' in size located in the local jail facility. The magistrate had a space heater to warm the office on the winter day JLARC staff visited. Primary access to the office is through the visitor's entrance of the local jail. The available restroom located down the hallway, while functional, was in disrepair.

* * *

Another local magistrate's office consisted of a room about 10' by 20' in size which was located within the same structure as a local grocery store. The office did have a separate entrance from that of the grocery store. While the office was well-kept, the furnishings were quite old.

* * *

A third local magistrate's office consisted of a small room about 10' by 10' in size with relatively new furnishings. Public access was limited to a secured entrance through the sheriff's office. Once access was granted by staff of the sheriff's office, JLARC staff were led through various offices to reach the office of the magistrate.

Further, the majority of chief magistrates responding to the JLARC staff survey reported that magistrates in their districts do not, in their opinion, have adequate office facilities to properly perform the duties currently required of magistrates.

Additional Magistrate Education and Training Would Be Necessary.

The need for additional magistrate education and training was identified as another impediment to broadening magistrates' scope of authority. Fifty-two percent of the chief magistrates responding to the JLARC staff survey reported that magistrates currently do not have the necessary education and training to perform such specialized responsibilities.

As discussed in Chapter I, there are currently a number of education and training requirements that magistrates must meet in order to be appointed and certified. To remain certified and maintain competence in legal procedures, magistrates must complete 24 continuing legal education (CLE) credits during each four-year term. Approximately 87 percent of the chief magistrates responding to the JLARC staff survey reported that the CLE training provided by OES is directly relevant to issues and problems magistrates routinely address. While this ongoing certification requirement appears sufficient for magistrates' current scope of authority, additional legal education and training would likely be required for magistrates to increase their scope of authority.

While studying the feasibility of training magistrates in arbitration techniques was included as a goal in the State judiciary's 1990-92 strategic plan, OES has given no

further consideration to the feasibility of providing training for magistrates in this area. Because of the other factors identified earlier in this section, an investment by the State for specialized training to enable magistrates to assume these more specialized functions is not warranted at this time.

Clear Support for an Adjudicatory and Arbitration Role for Magistrates Is Lacking

There has been some discussion that the magistrates' scope of authority be broadened to include an adjudicatory and arbitration role in areas currently within the purview of Virginia's general district courts. For example, adjudicating contested traffic offenses and Class three and four misdemeanors and arbitrating small claims actions has been discussed as potentially appropriate roles for magistrates. However, studies conducted by the judicial branch have generally not supported delegating adjudicatory or arbitration authority to quasi-judicial personnel outside of the courts. Moreover, few of the judges interviewed by JLARC staff support either role for magistrates.

Overview of Adjudication and Arbitration. Adjudication refers to the process whereby the law is applied to a set of facts by a fact-finder, and involves formally pronouncing a judgment or decree in a case. While magistrates are trained to perform certain duties for the court system, most are not qualified to act as a fact-finder since they have no formal training in the law.

Arbitration is a form of alternative dispute resolution (ADR). ADR is a relatively new approach to resolving disputes and sits in contrast to formal adjudication. While formal adjudication involves a judge hearing facts and rendering a decision, ADR includes more participation from the parties in reaching an agreement. Other examples of ADR include mediation, negotiation, and conciliation.

Judicial Branch Studies Have Generally Not Supported Providing Magistrates Adjudicatory or Arbitration Authority. Some consideration of magistrate involvement in adjudicating small claims actions was given in the 1977 magistrate utilization study conducted by OES. However, OES recommended that magistrates not become involved in adjudicating small claims actions, reasoning that the civil law can be quite complex and that specialized training is needed in these types of cases due to the involvement of non-lawyers.

The idea of placing some adjudicative authority outside the general district courts was discussed in the 1989 report of the Commission on the Future of Virginia's Judicial System. The commission suggested that contested traffic infractions be heard initially by hearing officers or administrative law judges within the Department of Motor Vehicles. The commission reasoned that some matters requiring judicial attention could more efficiently and effectively be resolved in an administrative forum.

The commission also suggested that consideration be given to the possible use of magistrates in arbitrating small claims actions. The commission concluded that

qualified magistrates trained with arbitration skills may provide a more effective and simpler mechanism for dealing with small claims actions when compared to formal adjudication by judges in the general district courts.

While no action was taken on either suggestion at that time, additional consideration of adjudicating contested traffic infractions outside the general district courts was the focus of a 1993 study conducted by the Committee on District Courts. However, the report of the Committee on District Courts found numerous problems with this approach in other states such as inadequate supervision and accountability of hearing officers, as well as citizen and bar dissatisfaction with not having cases decided by full-time judges. As a result, the Committee on District Courts recommended that the adjudication of contested traffic infractions remain within the purview of the general district courts, and that these courts be encouraged to modify case docketing procedures to reduce the amount of time spent disposing of these cases.

Many Chief Magistrates Do Not Appear to Support an Adjudicatory or Arbitration Role for Magistrates. On the JLARC staff survey, chief magistrates were asked whether magistrates should assume an arbitration or adjudicatory role for some functions currently within the purview of the general district courts. Analysis indicates that there does not appear to be strong support from chief magistrates for expanding magistrate authority to include these specialized duties.

For example, fewer than 50 percent of the chief magistrates responding to this question supported magistrate involvement in arbitrating small claims actions and adjudicating contested traffic offenses. More than 50 percent support magistrate involvement in adjudicating Class three and four misdemeanors (Table 12). However, there does not appear to be a strong support for expanding the authority of magistrates from their primary supervisors.

Some chief magistrates also expressed concern over having magistrates, who are not required to be licensed to practice law in the State, perform an adjudicatory role for the general district courts. Another chief magistrate thought that such a role for magistrates would be reminiscent of the role held by the former justices of the peace. For example:

One chief magistrate reported that it would not be appropriate for magistrates to assume an adjudicatory role unless magistrates were required to be licensed to practice law in the State. He further noted that having non-lawyers performing this function would be unfair to the public, as the public expects to be able to have their case heard by a judge and have their “day in court.”

* * *

Another chief magistrate reported that magistrates are not qualified to perform an adjudicatory role since they have no formal training in the law. He further noted that allowing magistrates to assume such a role

Table 12

Chief Magistrate Responses to Statements Regarding an Arbitration and Adjudicatory Role for Magistrates

Statement	Yes	No	Total Number of Respondents
Magistrates should arbitrate small claims actions	47%	53%	30
Magistrates should adjudicate contested traffic offenses	48%	52%	31
Magistrates should adjudicate Class 3 and 4 misdemeanors	58%	42%	31

Source: JLARC staff analysis of chief magistrate surveys, April 1996.

could generate numerous appeals of magistrates' decisions and not result in any efficiency for the court system.

* * *

One chief magistrate reported that allowing magistrates to adjudicate cases "would be somewhat of a step backward to the time before combining the various lower courts" to form the statewide district court system.

As mentioned earlier, one of the reasons for establishing the magistrate system in 1974 was to limit the statutory authority of these personnel, as there was some concern that some justices of the peace were performing judicial functions without the necessary training, expertise, or qualifications.

Judges Contacted for this Study Do Not Appear to Support an Adjudicatory or Arbitration Role for Magistrates. JLARC staff interviewed a combination of 12 circuit and general district court judges in their position as the district's magistrate supervising authority for input on these issues. Support for broadening magistrates' scope of authority to include an adjudicatory or arbitration role was limited to a few circuit and general district court judges.

The vast majority of the judges interviewed reported that adjudicating contested traffic offenses and Class three and four misdemeanors is a role better left to the courts, which utilize judges with substantial legal experience and a license to practice law in the State. For example:

A circuit court judge reported that magistrates should not be involved in adjudication since they are not formally trained in the law and are not judges.

* * *

A general district court judge indicated that even with the increasing workload of his court, adjudication is the role of the court and not an appropriate role for magistrates.

Moreover, several judges interviewed for this study noted that even with additional training magistrates would not be qualified to perform an adjudicatory role for the general district courts since most are not formally trained in the law.

Further, only three of the 12 judges interviewed currently support magistrate involvement in arbitrating small claims actions. Moreover, several judges noted that disposing of small claims actions should remain within the purview of the general district courts, since their courts have an adequate number of judges to handle these cases. One of these judges noted that it was important for litigants to have their “day in court.”

Other Developments May Have Reduced the Need for Magistrate Involvement in Arbitrating Small Claims Actions. In addition to the factors identified throughout this section, other recent developments may have mitigated the need for consideration of magistrate involvement in arbitrating small claims. First, there has been the authorization by the General Assembly for a small claims division within certain general district courts. There are seven localities in the State currently operating a small claims division within the general district court, including: the counties of Albemarle, Arlington, Culpeper, Fairfax, and Stafford; and the cities of Falls Church and Hopewell. In addition, legislation passed during the 1996 General Assembly gives the authority for seven other localities to establish a small claims division.

Second, there are currently about 600 individuals across the State certified to act as mediators in the court system at a minimal cost to participants. As a result, individuals involved in actions that might be resolved through mediation now have this option available. The number of private mediators available may be sufficient to meet both the current demands of the court system as well as demand into the near future.

Recommendation (9). At this time, none of the adjudicatory or arbitration authority currently the responsibility of the State’s court system should be assigned to magistrates.

OVERSIGHT AND MONITORING COULD BE ENHANCED

Section 19.2-43 of the *Code of Virginia* directs the Executive Secretary of the Supreme Court to “assist the chief general district judges and general district courts in the supervision . . . of magistrates.” Under this authority, in addition to directives from the Committee on District Courts, the Office of the Executive Secretary of the Supreme Court (OES) provides a number of oversight and technical assistance services to the magistrate system.

Chief magistrates and magistrates are generally satisfied with the routine technical assistance provided by OES staff. In addition, OES has a system established to provide routine monitoring of the system. However, OES needs to enhance its process of administering monitoring visits. While OES magistrate monitoring visits may be extensive in scope, additional structural and reporting requirements should be implemented in order to more effectively promote consistency and effectiveness in the delivery of magistrate services.

Magistrates Rate OES' Technical Assistance Favorably

JLARC staff requested information on the JLARC staff surveys from chief magistrates and magistrates on a number of issues related to the technical assistance provided by OES. Chief magistrates were asked to evaluate the timeliness and effectiveness of technical assistance in the following areas:

- computer system support,
- general office operations,
- hiring staff and personnel administration, and
- magistrate training and legal issues.

Many of the chief magistrates responding to the survey had not requested technical assistance in some of the areas mentioned above. However, for those chief magistrates who did request technical assistance from OES, they generally rated the assistance favorably. Magistrates were also satisfied with the technical assistance provided by OES. Eighty-two percent of the magistrates responding to the JLARC staff survey rated OES' technical assistance favorably.

OES' Monitoring Process Lacks Structure and Consistency

In addition to addressing routine requests for advice or assistance, OES technical assistance staff also coordinate a number of monitoring visits in which they assess the operations of magistrate offices and make recommendations for improvements. Although OES does not make the precise distinction between technical assistance and monitoring, much of the work done on-site by OES staff in a management analysis review is to monitor the activities in magistrate offices for compliance with the *Magistrate Manual* and the *Code of Virginia*.

One reason for the lack of structure in the OES monitoring visit process is that there are no written policies or procedures to guide the administration of these visits. According to OES staff, there are no guidelines in the *Magistrate Manual*, or any other publication which state which areas or issues should be or will be reviewed during monitoring visits. Rather, OES staff indicated that they are guided by the policy of the Committee on District Courts, which directs OES "to conduct periodic technical assistance and management systems analysis visits of magistrate offices."

In the absence of written guidelines or procedures, technical assistance staff have apparently differed in their approach to conducting monitoring visits. Moreover, the use of contrasting forms and the gathering of different information has added to the lack of uniformity in the monitoring visit process. For example:

While one OES staff member has 15 questions designed to access information from chief magistrates during management analyses, the second technical assistant uses approximately 60 questions. Also, one OES staff member reviews areas such as frequency of staff meetings, number of shifts worked as a magistrate, plans for audio-visual systems, and district dress codes. However, the other OES staff person does not formally address these areas.

This is not an issue of one staff member doing too little or one staff member doing too much; rather, this is an issue regarding the lack of uniformity in the execution of monitoring visits. Without written guidelines to provide a framework for the administration of the reviews, the OES technical assistance department may encounter difficulties in creating consistency across magistrate offices statewide.

In addition, the frequency of monitoring visits conducted by OES staff varies. A review of magistrate technical assistance monthly logs for a three year period ending February 1996 revealed that OES staff were not uniform in their execution of the management analyses of magistrate offices. The OES staff member who appeared to have not conducted a management analysis during the time period specified above, indicated that he had not been conducting "formal" management analyses. He did note, however, that he had been in his assigned districts performing technical assistance functions and monitoring visits. However, these visits were not designed to be as comprehensive as management analyses and did not always result in written reports.

When lapses occur in the frequency of these visits, the potential for problems arise. For example:

A magistrate office in one judicial district had not undergone an official OES management analysis since 1988. Consequently, when a management analysis was conducted in March 1996 at the request of the magistrate supervising authority, a number of deficiencies were identified. Because an official management analysis had not been conducted in eight years, problems that were identified in the 1996 visit might have been identified and resolved years earlier had at least one formal OES review been conducted between 1988 and 1996. As a result, some of the areas cited as deficient in the review "place[d] an unneeded burden on magistrates and is counter productive to streamlined efficiency."

Despite the scope and quality of the management reviews conducted by OES staff, the lack of consistency in the manner they are conducted can diminish the effectiveness and uniformity they are intended to achieve. Moreover, the written results

of the management analysis visits are forwarded to the Committee on District Courts for review. Because the Committee is the policy setting board for the district courts and the magistrate system, the Committee needs to be provided with reports that are consistent in content and reflect reviews that are uniform in application. To achieve this, written policies and procedures governing monitoring visits are needed in order to assist OES staff in creating uniformity in the frequency and execution of the reviews.

Recommendation (10). **The Office of the Executive Secretary of the Supreme Court should develop written policies and procedures for approval by the Committee on District Courts to guide the administration of the Office's monitoring visit process. At a minimum, these policies and procedures should include provisions for creating uniformity in the areas to be reviewed and the frequency of the visits.**

OES' Recommendations Are Not Routinely Implemented

The OES reports reviewed for this study indicate that some local chief magistrates and magistrate supervising authorities are not consistently implementing the recommendations resulting from monitoring visits. Consequently, magistrate offices are being cited for numerous deficiencies or problems during consecutive audits. For example:

The results of a 1995 OES management analysis revealed that a local magistrate management team was not implementing recommendations from previous OES reviews. For example, in 1992 the district was cited for failing to implement seven recommendations suggested in a 1989 report. Further, the results of the 1995 analysis revealed that the district still had failed to implement five of the seven repeat deficiencies cited in 1992.

The results of a recent management analysis in 1996 revealed that the judicial district's magistrate offices under review had multiple cited deficiencies which were repeat deficiencies from reviews conducted during 1992 and 1988. The failure of this district to implement recommendations issued by OES technical assistance staff has allowed some services in this office to continue to be delivered differently than required by the *Code*. For example:

*OES staff reporting on a management analysis visit of magistrate offices in one district noted that over the course of three separate analysis covering eight years, magistrates in certain offices did not conduct bail hearings or make independent bail decisions as required by §19.2-234 and Chapter 9 of Title 19.2 when the defendant was arrested on a circuit court *capias*. In this case, OES staff noted that "the magistrates function is limited to jailing or releasing the defendant by completing the necessary commitment or recognizance card."*

An Attorney General's opinion on this type of issue stated that "magistrates do not have authority to commit persons to jail until such time as a hearing respecting bail has been conducted. Commitment to jail of one who has been arrested without such a hearing, it might be argued, constitutes an act by a magistrate outside the scope of his jurisdiction." The opinion also noted that if this argument were substantiated, it could "subject a magistrate to liability"

Not implementing substantive recommendations such as these could infringe individual rights and potentially put at risk the objectivity of magistrates.

Presently, chief magistrates and magistrate supervising authorities are not required to inform OES or the Committee on District Courts of action taken to implement recommendations or of the status of the recommendations. To help ensure action regarding any recommendations is taken, a policy requiring chief magistrates and magistrate supervising authorities to respond within 90 days on the status of OES' recommendations should be developed for approval by the Committee on District Courts.

Requiring a written response will help ensure that steps are actually taken at the local level to implement the recommendations. Furthermore, the response will keep both OES and the Committee on District Courts apprised of potential problems or other issues that are hindering implementation of specific recommendations.

***Recommendation (11).* The Office of the Executive Secretary of the Supreme Court should develop for approval by the Committee on District Courts a policy that requires chief magistrates and magistrate supervising authorities to respond within 90 days regarding the status of recommendations contained in the Office of the Executive Secretary of the Supreme Court's management reviews.**

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