

**Report of the  
Joint Legislative Audit and Review Commission  
To the Governor and  
The General Assembly of Virginia**

**Operational and Capital  
Funding for District and  
Circuit Courts**

**Commission Draft**

## In Brief

### Operational and Capital Funding for District and Circuit Courts

Courts are not required to cover their costs, although they generate revenue for the State and localities through fines, fees, and taxes. Statutes require localities to provide courtrooms and office space for court personnel, and many supplement State-funded staff salaries.

In FY 2008, the State spent \$199.5 million more to operate courts than it received in fee revenue (not counting taxes and special fund revenues). Localities spent at least \$10.6 million more than they received in fee and fine revenue (not counting nonpersonnel costs such as construction). The Judicial Council of Virginia may wish to review court fees and recommend adjustments to recoup a greater portion of costs.

Most localities routinely address courthouse problems, but some localities have addressed problems only after a court order. Judges should routinely be consulted on courthouse needs.

Costs for 43 courthouse projects completed since 2005 or currently underway exceed \$720 million, funded by local revenues. A State-authorized fee for courthouse construction covers only a small portion of these costs, and statutory restrictions further reduce the fee's effectiveness.

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## **Commission Draft**

This document is a draft of the JLARC report ***Operational and Capital Funding for District and Circuit Courts***. The draft has been assembled for discussion and factual review and is subject to additional verification and editorial review. Do not quote, publish, or release any material contained in this document.

**Joint Legislative Audit and Review Commission**

**November 9, 2009**



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# JLARC Report Summary:

## Operational and Capital Funding for District and Circuit Courts

### Key Findings

- Virginia has more than 170 local courthouses that vary significantly in age and design. While many have architectural and historical value, they may be ill-suited to contemporary needs for courthouse security, office space, and records storage. (Chapter 1)
- As a core governmental function, courts are not required or expected to cover their costs, although they generate revenue for the State and localities through the collection of fines, fees, and taxes. Focusing solely on fee revenue, as directed by the study mandate, the State spent \$199.5 million more to operate courts than it received in fee revenue. (Chapter 2)
- Statutes require localities to provide courtrooms and office space for court personnel. Localities are authorized to supplement salaries of court clerks and deputy sheriffs who provide court security. In FY 2008, fee revenue collected by the courts fell short of localities' court operating expenses by least \$10.6 million, not including capital spending. (Chapter 3)
- A majority of court clerks cite problems with their courthouses, including security concerns. While most localities routinely identify and address courthouse problems, some have been less responsive. In some cases, problems are only addressed when the locality is compelled by a court order issued by the circuit court judge. (Chapter 4)
- Constructing court facilities can be costly for local governments. Costs for 43 court projects completed since 2005 or currently underway exceed \$720 million. These projects are typically funded through local general revenue, resulting in an impact on property taxes. A State-authorized fee for courthouse construction covers only a small portion of project costs, and statutory restrictions further reduce the fee's effectiveness. (Chapter 5)

Item 29F of the Appropriation Act directs the Joint Legislative Audit and Review Commission (JLARC) to review the funding of district and circuit courts, including courthouse construction, operation, and maintenance, and the extent to which the fee structure provides “an equitable, efficient and sufficient source of revenues for this purpose.”

The court system involves many aspects of everyday life. Principal roles include dispute resolution; law enforcement; divorces, adoptions, and other domestic relations issues; and the settlement of

wills and estates. Court clerks also keep important records of decisions, transactions, and events.

District and circuit courts are housed in more than 170 local courthouses in Virginia. Most of these courthouses contain court functions, including courtrooms, judges' offices, clerks' offices, and holding cells, although at least one-third also contain non-court related local offices. About 70 percent of localities appear to have one courthouse for both district and circuit courts, while 30 percent operate two or more courthouses.

### **STATE AND LOCAL GOVERNMENTS SHARE FUNDING OF COURT OPERATIONS**

Taxes and fees collected by courts are generally used for the broad purposes of State and local government, not to defray court operating costs. There is no statutory or other requirement that district or circuit courts generate sufficient revenue to cover their operating costs. Judges and clerks are paid from State general fund revenues. Localities can supplement clerks' salaries. (The fee-for-service basis for funding court clerks' operations ended for district court clerks in 1973 and for circuit court clerks in 1992.) Courthouses have been the responsibility of the localities from early in the State's history.

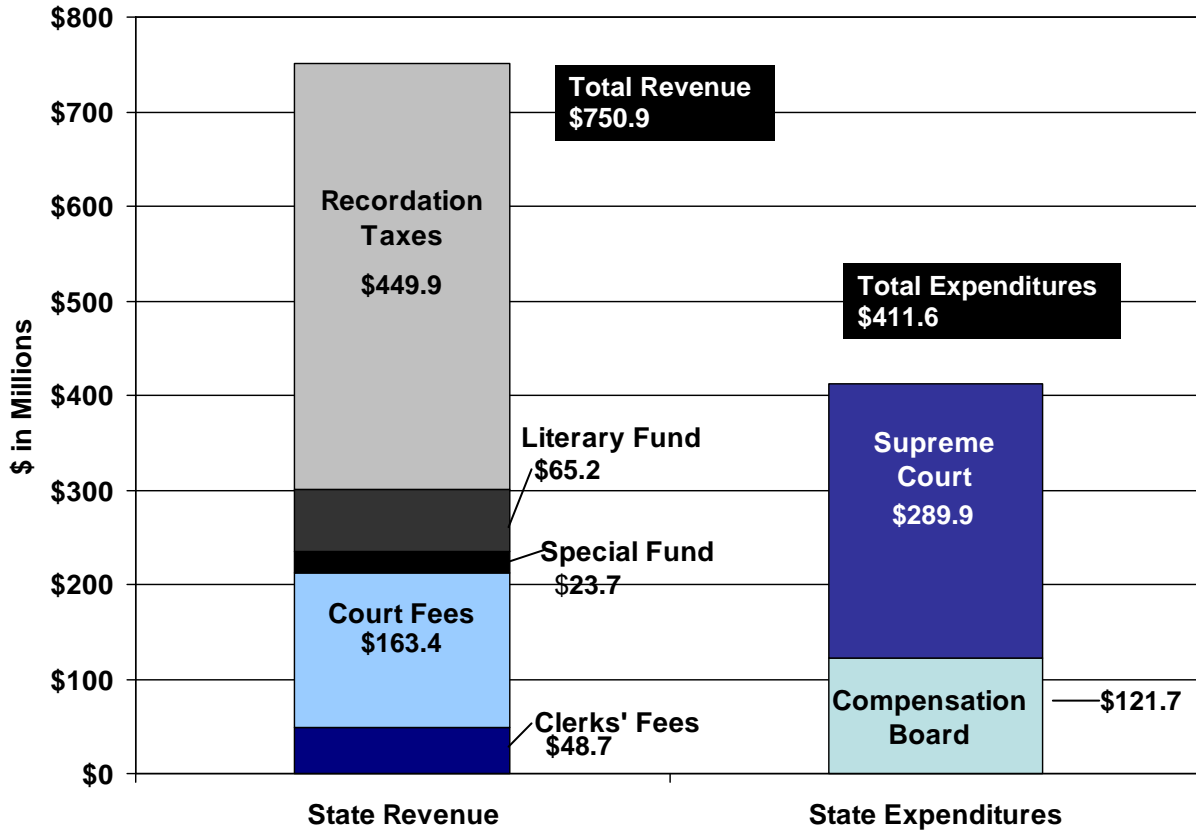
State and local spending on the courts totaled \$596 million in FY 2008, not counting local non-personnel spending such as spending on courthouse construction and renovation. Total State and local revenues generated by court fines, fees, and taxes exceeded \$1 billion.

### **STATE PAYS MORE FOR DISTRICT AND CIRCUIT COURTS THAN IT RECEIVES IN FEE AND FINE REVENUE**

The State spent \$411.6 million for district and circuit courts in FY 2008, as shown in the figure on the next page. The Supreme Court funds the district court judges, district court clerks, and circuit court judges, totaling \$289.9 million in FY 2008. The Compensation Board establishes the budgets for circuit court clerks and sheriffs' court security operations, and reimburses localities for expenses incurred up to the board-approved amount. For these activities the Compensation Board spent a total of \$121.7 million in FY 2008.

The State received \$750.9 million in FY 2008 revenue from the courts. Approximately 60 percent, or \$449.9 million, was State recordation tax collections. These taxes on land transactions are collected by circuit court clerks and recorded as State revenue;

**State Court Revenues and Expenditures on District and Circuit Courts, FY 2008**



Source: APA Commonwealth Data Point, Supreme Court Financial Management System.

however, these taxes are deposited into the State’s general fund and are used for broad governmental purposes. Reporting these tax collections as court revenue inflates the amount of revenue generated by court activities.

Excluding recordation taxes and special fund (including literary fund) collections, district and circuit courts collected \$212.1 million in fee revenue. Thus, the State spent \$199.5 million more to operate district and circuit courts in FY 2008 than it collected in fee revenues.

The mandate for this study directs JLARC to consider whether the court fee structure is equitable and sufficient. These two factors need to be balanced in setting court fees. For example, the Commission on Virginia Courts in the 21<sup>st</sup> Century noted in its final report that the State “should ensure filing fees are not an economic barrier to access to its courts.” On the other hand it is clear from this analysis that fees are not sufficient to cover the State’s operating costs.

The Judicial Council of Virginia is responsible for studying the rules and procedures of the judicial system. Because fees are not systematically or routinely adjusted to reflect changes in the cost of providing court services, this report recommends:

- The Judicial Council of Virginia may wish to review court fees and recommend to the General Assembly an appropriate schedule of fees to recoup a greater portion of operating costs.

### **LOCALITIES SPEND MORE FOR COURTS THAN THEY RECEIVE IN COURT FEE AND FINE REVENUE**

Localities provide operating support and office and court space for district and circuit courts, clerks of the circuit courts, and sheriffs' deputies who provide court security. For these functions, localities spent at least \$184.4 million in FY 2008, according to the Auditor of Public Accounts' *Comparative Report*. This figure underestimates total local costs, as expenditures on capital maintenance, renovation, and construction are not included, and are not tracked by any State agency.

Localities collect substantial revenues from district and circuit court operations. In FY 2008, courts collected a total of \$333.7 million in local revenue. Of this amount, local recordation taxes were approximately \$159.9 million, or 48 percent, of total collections. When recordation taxes are removed, localities collected a total of \$173.8 million in fee and fine revenues in FY 2008.

Thus, localities spent at least \$10.6 million more on district and circuit court-related functions than they collected in fee and fine revenues in FY 2008. Approximately 55 percent of localities, or 68 of 124 for which revenues are identified, had court-related expenditures that exceeded court fee and fine revenue.

Statutes authorize localities to assess a courthouse maintenance and construction fee of up to \$2 on most cases. Localities spend significantly more on courthouse maintenance than they collect from this fee. In interviews with JLARC staff, local administrators noted that this fee is insufficient to cover the local costs of courthouses. Some localities spend ten times more operating court facilities than they collect from this source.

### **MOST COURT CLERKS REPORT COURTHOUSE DEFICIENCIES WITH ABOUT HALF REPORTING SECURITY CONCERNS**

While some courthouses offer state-of-the-art facilities, others are outdated or inadequate. In a JLARC staff survey, more than 70 percent of court clerks reported a courthouse deficiency in at least

one of eight key areas. About a quarter of clerks reported deficiencies in six or more of these areas.

The *Code of Virginia* requires that court facilities “safeguard court personnel, participants, and the public.” Nonetheless, 43 percent of circuit court clerks and 52 percent of district court clerks reported problems with the overall security of their court facility, and about 45 percent of all clerks indicated that their buildings do not provide separate circulation paths for the public, judges, staff, and defendants. Other security concerns identified by court clerks included inadequate holding cells and a lack of metal detectors.

Court clerks also identified problems with accessibility, efficiency, space, storage, and maintenance. According to survey responses, 39 percent of circuit and 48 percent of district court clerks felt their buildings are not efficient for the work they do. Twenty-one percent of circuit court clerks and 30 percent of district court clerks felt there was inadequate access for the public and individuals with disabilities. In a survey, court clerks most frequently identified records storage as a concern, with over half saying their facilities provided inadequate records storage.

### **COURTHOUSE NEEDS ARE NOT ALWAYS IDENTIFIED IN LOCAL PLANNING PROCESSES**

Resolving courthouse deficiencies is critical to ensuring the effectiveness of court operations and the safety of surrounding communities. However, some courthouse problems have reportedly gone unresolved for decades.

Statutes set out a process for localities to develop and implement a capital improvements program. Localities are not required to use this process, and there is substantial variation among localities that do use it. However, judges and court clerks are omitted from the process outlined in these statutes and are not always consulted. In some cases, this may result in courthouse problems being overlooked or considered a lower priority relative to other local projects.

To encourage localities to address courthouse deficiencies in an efficient and timely way, this report recommends:

- The General Assembly may wish to consider amending the *Code of Virginia* to specify that local planning commissions consult with judges and court clerks as part of the capital improvement program.

## **COURTHOUSE PROJECTS ADDRESS MANY PROBLEMS, BUT NOT ALL LOCALITIES ARE RESPONSIVE**

A variety of factors appear to contribute to the uneven responsiveness of some localities in addressing courthouse problems. Some localities have undertaken projects in recent years to improve their courthouses. In the five year period from 2005 through 2009, court clerks in 26 localities reported completing major courthouse projects. Clerks in an additional 24 localities reported that projects are currently underway or in the planning stages.

Survey results suggest that courthouse projects undertaken by localities have helped to address courthouse problems. For instance, circuit court clerks who reported a circuit courthouse project in their locality in the past ten years were much more likely to agree that their facilities were adequate.

Nonetheless, not all localities have been responsive to courthouse needs. When asked about the responsiveness of their localities to court facility needs, most court clerks (at least 68 percent) said their localities had been at least somewhat responsive, although only a minority said their locality had been fully or mostly responsive. A majority of clerks citing at least one major type of courthouse problem do not expect their localities to undertake projects to address these shortcomings.

Several court clerks surveyed or interviewed by JLARC staff expressed frustration about the lack of local government responsiveness. In some cases, ten or more years were reported to pass between the identification and resolution of courthouse problems. Several reasons appear to account for a lack of local support for courthouse projects, including projects competing for resources with a variety of local projects and citizens' concerns about the historic value of old courthouses.

## **CIRCUIT COURT JUDGES CAN ORDER A LOCALITY TO IMPROVE COURT FACILITIES**

If a locality is not responsive to courthouse needs, §15.2-1643 of the *Code of Virginia* provides that if a locality's court facilities are found to lack adequate security, need significant repairs, "or otherwise pose a danger to the health, welfare and safety of court employees or the public," the circuit court judge can order local officials to show cause why a *writ of mandamus* should not be issued to cause the necessary work to be done. A *writ of mandamus* is an order issued by the circuit court judge compelling, in this case, the local government to perform its duty of providing suitable court facilities. JLARC staff identified 13 localities where this process has been initiated in the last 20 years. Four of the 26 projects com-

pleted between 2005 and 2009 were completed after a judge commenced this action.

Virginia statutes identify four areas in which a courthouse can be found inadequate through the *mandamus* process: facility security, efficiency of layout and circulation patterns, provision of administrative and service areas, and the safety and utility of the facility. In addition, JLARC staff review of legal orders in *mandamus* cases found that non-compliance with *Virginia Courthouse Facility Guidelines*, developed in 2001 by the Supreme Court, is often cited to demonstrate inadequacies in courthouse facilities or with locally proposed solutions.

Local staff indicated that the *Guidelines* are used by localities as if they were State standards for cases under *mandamus*. While the *Guidelines* appear to be reasonable, they were not intended as construction standards. This report recommends:

- The Supreme Court may wish to clarify the purpose of the *Guidelines* and, if they are intended to be used as building and evaluation standards for local courts, they should be periodically revised with input from the public and other relevant stakeholders.

The statutory *mandamus* process should probably be seen as a fall-back or “worst case” procedure. Ideally, courthouse renovation or replacement should be managed by local governments as a routine part of local planning for capital improvements. During interviews with JLARC staff, local administrators generally reported that judges were patient with the local process and used the *mandamus* process only after years of local inability or failure to address their concerns.

JLARC staff were unable to identify any cases in which an actual *writ of mandamus* had been issued. Instead, the prospect of a *mandamus* order appears to be a substantial disincentive to localities and drives the locality to come to an agreement with the judge on a solution. Even in localities that are not under court order, the threat of an order can be the catalyst for the locality beginning a process of planning and building a facility.

## **COURTHOUSE CONSTRUCTION AND RENOVATION IS COSTLY**

Courthouse construction costs appear to be, on a per square foot basis, 30 to 40 percent higher than standard commercial office building costs. This may be because of the unique role of courthouses, characterized by the need to balance the public’s right to access the court building with concerns about the security of all parties who may be part of a court case, including judges, court

staff, juries, defendants, witnesses, and the public. Courthouses require certain features which strengthen security and increase costs, such as separate circulation paths, stairs and elevators for court staff, the public, and prisoners; security cameras and monitors; holding cells; and a sally port for secure prisoner transfer from jail.

Between 2005 and 2009, major courthouse projects undertaken by 26 localities cost an estimated \$273 million, as shown in the table below. In addition, court clerks from localities with projects or plans underway expect spending to exceed \$450 million.

**Estimated Costs of Planned and Completed Courthouse Projects Since 2005**

Timeframe	Number of Projects <sup>1</sup>	Estimated Costs (millions)
2005 to 2009	26	\$273
Future projects	17 <sup>2</sup>	453
<b>Total</b>	<b>43</b>	<b>726</b>

<sup>1</sup>Projects with costs or estimated costs over \$500,000.

<sup>2</sup>Cost estimates unknown or unavailable for nine other projects. Twenty-four localities reported 26 projects that will be completed after 2009.

Source: JLARC staff analysis of survey responses from district and circuit court clerks, news articles, and interviews with city/county administrators.

**NEW COURTHOUSE CONSTRUCTION FEE PROVIDES LIMITED FUNDING WITH UNNECESSARY RESTRICTIONS**

The 2009 General Assembly provided a process for localities to assess and collect an additional \$3 fee for courthouse construction or renovation on top of the \$2 fee already authorized for courthouse construction and maintenance. The new \$3 fee, however, can only be imposed if the Department of General Services (DGS) certifies the courthouse as non-compliant with the safety and security guidelines contained in the *Virginia Courthouse Facility Guidelines*.

JLARC staff identified several concerns with this certification process. First, this process may create an incentive for localities to allow court facilities to fall into disrepair in order to qualify for the fee. Second, the process requires a locality to assert that its facility is out of compliance with safety and security guidelines, which may discourage some localities from seeking the fee even in cases where they might be eligible. This assertion coupled with a subsequent certification by DGS could send a message to local citizens that their courthouse is unsafe and could potentially weaken the locality’s standing in *mandamus* cases.

Because of these concerns, this report recommends:

- the General Assembly may wish to amend the *Code of Virginia* to allow localities to adopt an ordinance implementing the new \$3 fee without the requirement of DGS certification.

Many localities view this fee as a minor source of funds for courthouse projects. Current fees would generate about \$5.5 million annually if imposed on all jurisdictions. This is a very small portion of the courthouse renovation and construction costs already identified by localities, estimated at \$453 million. Therefore, most courthouse projects will be funded from local tax sources, such as real property taxes.



# Chapter 1

## Overview of Virginia's Court System

### In Summary

Virginia has 120 circuit courts, which are courts of record with general trial jurisdiction handling felony criminal cases, civil suits above \$15,000, divorces, and other cases. The 201 district courts handle traffic and misdemeanor cases as well as juvenile and certain domestic relations matters. All of these courts are housed in more than 170 courthouses provided, as statutes require, by localities. Many local courthouses have significant architectural and historical value, but many of these older buildings are also ill-suited to contemporary needs for courtroom security, office space, and records storage. There is also significant variation in the functions that are included in courthouses around the State.

Virginia's system of circuit and district courts provides the core governmental functions of dispute resolution and law enforcement. It serves both State and local purposes, and is funded jointly by the State and the localities. With the consolidation and reorganization of the courts in the early 1970s, the State assumed greater responsibility for the operation of the courts across the Commonwealth. But responsibility for the construction and maintenance of courthouses remains with Virginia localities.

A statutory provision that dates at least to the early 1800s requires localities to provide courthouses and clerk's offices. This is a significant local expense for what is often described as a State court system: the judges are State employees enforcing State laws, assisted by clerks who are either State employees, in the case of the district courts, or in the case of the circuit courts, employees whose salaries are largely paid for with State funds. Nonetheless, many localities have recently completed renovation or replacement of court facilities, and more are in some stage of doing so.

The 2009 Appropriation Act directed the Joint Legislative Audit and Review Commission (JLARC) to assess how revenues collected by the courts compare to the costs of courthouse construction, operation and maintenance (Appendix A). In carrying out this cost assessment, JLARC staff also examined the process for courthouse construction, operation, and maintenance, including the statutes that authorize judges to order localities to renovate or construct a courthouse.

JLARC staff interviewed chief circuit and district court judges and circuit court clerks and conducted surveys of circuit and district court clerks. The study team discussed court issues with staff in 20

localities. Extensive financial data was collected from the Supreme Court, State Compensation Board, the Auditor of Public Accounts, and localities. Additional information about the methods used in this study is in Appendix B.

## **HISTORY OF VIRGINIA'S COURT SYSTEM**

Virginia's judicial system has its roots in the colonial era. The General Assembly's powers to establish courts and their jurisdictions date to the first Constitution, in 1776. The judicial branch evolved into a three-level structure (a Supreme Court of Appeals, circuit courts, and several lower-level courts of limited jurisdiction) by 1870.

Except for a brief period in the mid-1800s, judges have been elected by the legislature since 1776. Since 1851, the Constitution of Virginia has required circuit court clerks, sheriffs, and other "constitutional officers" to be elected by the voters, and this requirement is still the case today.

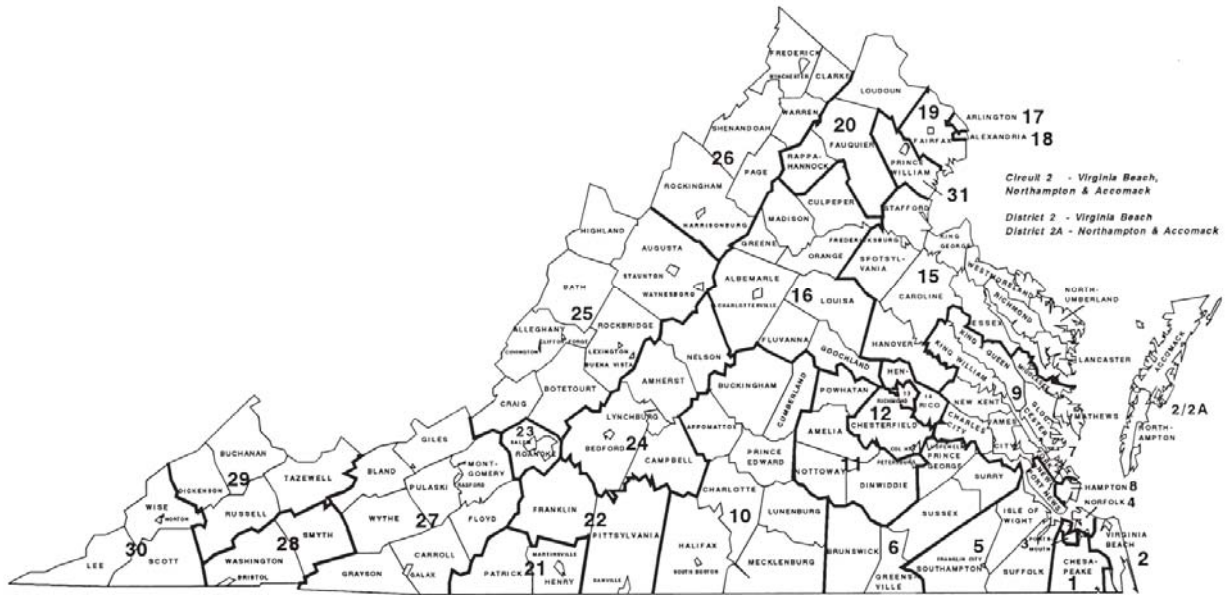
The most recent Constitution, adopted in 1971, established only one court, the Supreme Court. It left to the General Assembly details about the types and jurisdictions of the lower courts. The 1971 Constitution also focused administrative management of the judicial system on the Chief Justice.

The 1973 General Assembly reorganized and consolidated Virginia's court system, enlarging the existing circuits to bring the old city courts into the State court system. It also specified the still-existing configuration of localities within 31 circuits and 32 districts (Figure 1). Judges were to draw up consolidation plans, appoint a chief clerk who would serve until the next election and consolidate the previous clerks' offices, and in general provide for the "efficient utilization of facilities and equipment, organization of personnel and distribution of work."

The 1973 General Assembly also specified that the State would pay 100 percent of the cost of district courts and the operation of the district court clerks, although circuit court funding was divided between the State and localities. Legislation in 1979 (HB 599) required the State to pay 100 percent of the circuit court judges' salaries and expenses—but not the salaries or expenses of circuit court clerks.

Until 1992, circuit court clerks remained on a fee-based system in which fees paid to the clerks covered salaries and certain expenses. In 1992, the State Compensation Board began to reimburse localities based on Board-approved budgets for circuit court clerks (except in three localities where the clerks continue to be fee-based) in

**Figure 1: Virginia Localities Comprise 31 Judicial Circuits and 32 Districts**



Source: Judicial Council of Virginia, 2008 Report to the General Assembly and Supreme Court of Virginia.

the same manner as other constitutional officers. In addition to these State-paid reimbursements, statutes authorize localities to supplement the salaries of the circuit court clerks and their staffs. Statutes also allow localities to keep a portion of any “excess fees” collected. These are fees in excess of the amount the locality receives from the Compensation Board.

Today, only the Supreme Court and Court of Appeals (established by the 1983 General Assembly) are entirely State funded and housed in State-provided office space (Table 1). Judges of the circuit and district courts are State funded, as are the district court clerks and their staffs (they are all State employees). However, statutes require localities to provide “suitable space and facilities to accommodate the various courts and officials thereof serving such county or city,” including a clerk’s office, fireproof records space, furniture, and office equipment (*Code of Virginia* §§15.2-1638, 1656). Statutes also authorize, but do not require, localities to provide salary supplements for circuit and district court clerks and their staffs (local supplements for district court clerks and their staffs were authorized for the first time by the 2008 General Assembly).

**Table 1: Funding of the Virginia Court System**

	<b>Salaries 100% State Funded</b>	<b>Localities Can Supplement Salaries</b>	<b>State Provides Offices &amp; Courtrooms</b>	<b>State Pays Operating Expenses</b>
Supreme Court	Yes	No	Yes	Yes
Court of Appeals	Yes	No	Yes	Yes
Circuit Court Judges	Yes	No	No	Mostly No
Circuit Court Clerks	Yes <sup>a</sup>	Yes	No	Mostly No
District Court Judges	Yes	No	No	Partial
District Court Clerks	Yes	Yes	No	Partial

<sup>a</sup>The Compensation Board has established salaries for circuit court clerks and their staffs. Localities may supplement the salaries of these positions, but not all localities do.

Source: JLARC staff analysis.

**FUNCTIONS AND ORGANIZATION OF VIRGINIA COURTS**

The court system involves many aspects of everyday life. While its principal roles include dispute resolution and law enforcement, the judicial branch also oversees the settlement of wills and estates, divorces, adoptions, and other domestic relations issues. Court staff also keep important records of decisions, transactions, and events. Many of these records must be maintained for 50 years or more, according to statutes. There are also provisions for the Virginia State Library to take custody of and maintain various older records.

**Circuit Courts**

The circuit courts are Virginia's trial courts of general jurisdiction, meaning they have the authority to try a full range of civil and criminal cases. Circuit courts try felony criminal cases, and civil suits of more than \$15,000 are adjudicated. Their jurisdiction is outlined in Table 2.

The circuit court system consists of 31 judicial circuits serving 120 separate circuit courts in the various counties and cities of the State. Figure 1 shows which localities are located in the circuits. In 2008, the circuit courts commenced 291,733 cases and concluded 289,098.

There are 164 circuit court judgeships in Virginia. Circuit court judges are elected for eight-year terms by a majority vote of both houses of the General Assembly. The Governor makes interim appointments. There are at least two judges serving in each circuit and as many as 15 serving in the State's largest judicial circuit (the 19<sup>th</sup>, Fairfax). The chief judge of the circuit is elected by majority vote of all the judges serving the circuit. Judges are required

**Table 2: Key Areas of Jurisdiction for Circuit Courts and District Courts**

Area of Jurisdiction	Circuit Court	District Court
<b>Civil Actions</b>	Exclusive original jurisdiction of monetary claims exceeding \$15,000	Exclusive original jurisdiction of monetary claims of \$4,500 or less
	Concurrent jurisdiction with general district courts over monetary claims between \$4,500 and \$15,000	Concurrent jurisdiction with circuit courts over monetary claims between \$4,500 and \$15,000
	Exclusive original jurisdiction over all equity matters including divorces and adoptions	
	Attachments; disputes involving property; wills and estates	
	Validity of a county or municipal ordinance or corporate bylaw	
<b>Criminal Cases</b>	All felonies, offenses that may be punished by imprisonment of more than one year	Preliminary hearings in felony cases
	Misdemeanor charges originating from a grand jury indictment	Misdemeanor charges
	Transfer or certification of felony offenses committed by juveniles	
<b>Appeals</b>	Misdemeanors	n/a
	General District Court or Juvenile and Domestic Relations District Court appeals (heard <i>de novo</i> )	
	Administrative agency appeals	
<b>Other</b>	Any case for which jurisdiction is not specified in the <i>Code of Virginia</i>	Traffic infractions, local ordinance violations Cases involving juveniles (delinquency, custody/visitation, status offenses) Domestic relations cases (support, show cause, etc.)

Source: *Virginia Courts in Brief*, [www.courts.state.va.us/cib/cib.htm](http://www.courts.state.va.us/cib/cib.htm).

to reside in the circuit in which they serve and must have been admitted to the Virginia Bar at least five years prior to their appointment to the bench. Retired judges often continue to hear cases on a part-time basis.

### **Circuit Court Clerks**

The office of the clerk of the circuit court dates from 1619. From the 17<sup>th</sup> century through much of the 20<sup>th</sup> century, the court clerk and sheriff were the primary local governmental authorities, per-

forming many wide-ranging duties. As recently as the 1980s, the circuit court clerk acted as the chief administrative officer in some Virginia localities.

The clerk of the circuit court is a constitutional officer elected to an eight-year term by the voters of the locality. Statutes set out no special requirements for the position other than residency in the circuit for at least 30 days. The clerk handles the administrative functions of the court and also has authority to probate wills, grant administration of estates and appoint guardians. The clerk is the custodian of the court records, and the clerk's office is where deeds are recorded and marriage licenses are issued.

Today, the *Code of Virginia* lists over 800 separate responsibilities for the 120 circuit court clerks. These clerks collect fees, fines and taxes; prepare forms and documents for the courts; manage juries; record land transactions; administer probate law; issue marriage licenses; and ensure public access to a law library, among many other duties. The clerk's office creates and maintains all court files and records, prepares court documentation, and manages the jury selection process as well as the overall court process.

The staff of the circuit court clerks' offices serve at the pleasure of the clerk, although localities administer the Compensation Board reimbursements and pay clerks' staff salaries and benefits. In FY 2008, circuit court clerks collected \$803.9 million in fines, fees, and taxes. Of this total, \$449.9 million, or 56 percent, was from the State recordation tax on deeds and \$85 million, or 11 percent, was clerk's fees.

## **District Courts**

District courts are considered "courts not of record" because parties to proceedings heard in these courts have the right to a *de novo* proceeding in circuit court (a new proceeding, not an appeal) which would supersede the district court action. Key areas of district court jurisdiction are listed in Table 2.

There are 32 districts with a total of 244 judgeships and 1,540 staff in the clerks' offices, all of whom are State employees. The judges are elected by the General Assembly to six-year terms. The courts are divided into 76 general district courts, 74 juvenile and domestic relations courts, and 50 combined district courts (courts that combine the caseloads of both the general district and juvenile and domestic relations courts). District judges are elected for six-year terms. Retired district judges often continue to hear cases on a part-time basis, supplementing the full-time judges.

Virginia's district courts concluded 3.9 million cases in CY 2008. The two largest categories of cases were traffic cases, accounting for 2 million, or 59 percent of the total, and juvenile and domestic relations cases, totaling 534,000, or 14 percent of all cases. The two most numerous juvenile and domestic relations matters included custody and visitation issues (157,635 or 30 percent of the 534,000 total) and support cases (97,400 or 18 percent).

### **District Court Clerks**

The 1,540 staff positions in the district court clerks' offices focus on administering the district court caseload, and do not share the wide-ranging duties of the circuit court clerks. Much of the caseload deals with the application of State laws, although district courts also deal with enforcement of local ordinances, such as parking issues and related matters.

Each district has a chief clerk and other personnel approved by the Committee on District Courts and funded by the General Assembly. The chief clerk and other personnel are chosen by the chief judge in the district. Clerks and their staff act as conservators of the peace, meaning they are authorized to issue warrants, detention orders, subpoenas, and various other forms of legal process. In FY 2008, district court clerks collected a total of \$280.7 million in State and local revenues.

### **Court Security**

Security in courtrooms and court facilities is provided by the local sheriff's office. Deputy sheriffs screen visitors, escort prisoners, maintain courtroom decorum, and provide other security services.

Although a deputy does not report to or work directly for a judge, the two have a day-to-day working relationship. Court deputies are part of the local sheriff's office. As constitutional officers, sheriffs receive funding from both localities and the State, via the State Compensation Board. The Auditor of Public Accounts has estimated that the Compensation Board paid sheriffs \$69.8 million for court security activities in FY 2008.

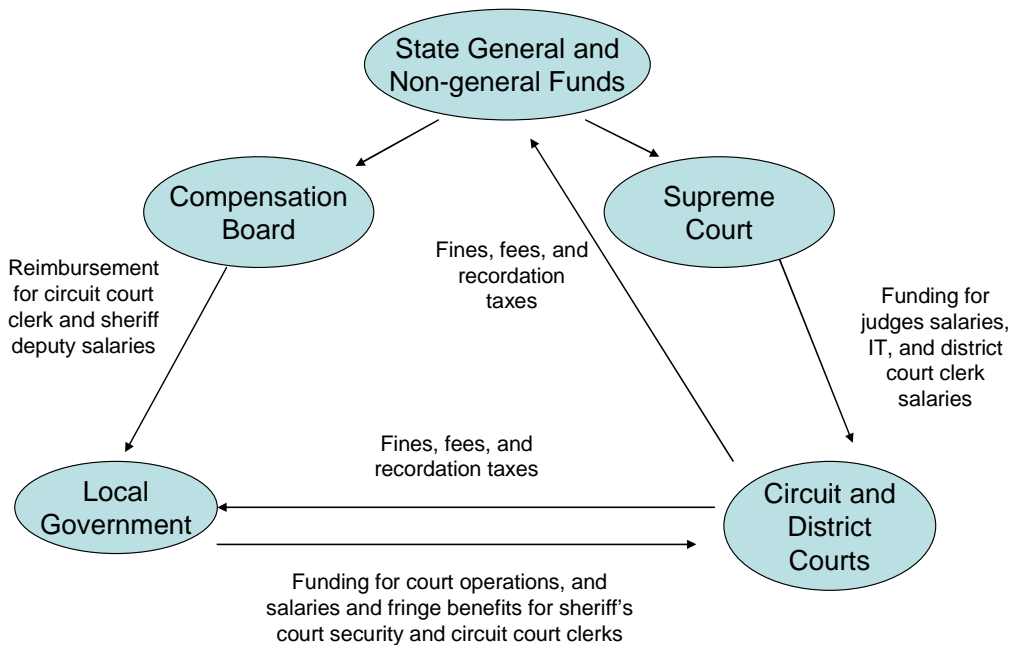
### **COURT FUNDING AND REVENUE ARE SHARED BY STATE AND LOCAL GOVERNMENTS**

The court system provides the core governmental functions of dispute resolution and law enforcement and serves both State and local purposes. Likewise, funding of the system, as well as court revenue, is shared between the State and localities.

Court expenditures and revenues are substantial. State and local spending on the courts totaled a minimum of \$596 million in FY 2008, not counting local non-personnel costs such as construction or renovation. Revenues generated by court fines, fees, and taxes exceeded \$1 billion.

State funding for circuit and district courts totaled \$411.6 million in FY 2008, and is appropriated to the Supreme Court and Compensation Board as noted in Figure 2. The Supreme Court provides funding for judges' and district court clerks' salaries. In addition, the Supreme Court provides information technology systems to help support court operations and to make certain information, such as land records, available electronically. Based on available appropriations, the Compensation Board provides reimbursements to local governments for the salaries of circuit court clerks and sheriffs' deputies.

**Figure 2: Court Funding and Revenue Is Shared by State and Local Governments**



Source: JLARC staff.

The 164 judgeships appropriated for the circuit courts reflect only the judges, who are State employees. The staff of the circuit court clerks' offices are not State employees, although they are indirectly funded by the State. Instead they are employees of the clerk and of the localities in which they serve.

The State Compensation Board provided appropriations for 1,144 positions in circuit court clerks' offices in FY 2008. As noted earlier, localities are statutorily required to provide office space and

office equipment and to cover other operating expenses for the courts, and are authorized to supplement the salaries of the circuit and district clerks.

Local governments also provide funding for court operations. For instance, localities are statutorily responsible for providing and maintaining court facilities. In addition to funding circuit court clerk positions reimbursed by the Compensation Board, many localities fund additional positions for the circuit court clerk. Localities may also supplement district and circuit clerks' salaries, and they typically provide fringe benefits for the office of the circuit court clerk. Local governments provide similar funding for sheriffs' deputies serving the courts.

Courts also generate substantial revenue for the Commonwealth and local governments through fines, fees, and taxes. Fines are financial penalties charged for violations of State laws or local ordinances. They are assessed when an individual is convicted of an infraction. For example, there are four classes of misdemeanors in Virginia with fines from \$250 to \$2,500. Felonies carry fines ranging from \$2,500 to \$100,000. Fees, on the other hand, are assessed on a variety of court transactions. Finally, the largest source of court revenue is recordation taxes, which are levied on land transactions recorded by circuit court clerks. The largest portion of revenue generated by courts (about 69 percent) goes to the Commonwealth; however, revenue from certain fines, fees, and taxes is transferred by circuit court clerks to local governments.

## **COURTHOUSE CONSTRUCTION AND RENOVATION**

Localities are required by the *Code of Virginia* to provide courthouses and suitable facilities for the judges and staff of district and circuit courts, including circuit court clerks (§15.2-1638). This has been a local responsibility since at least the early 1800s.

Many Virginia courthouses are of historic and architectural significance (Figure 3). The Virginia Landmarks Register lists 63 courthouses or courthouse districts, most of which are also on the National Register of Historic Places. Many of the listed facilities are still used as courthouses, although some have been converted to museums and other uses.

Virginia has many historic court buildings and court records. Virginia has what is generally considered to be the oldest public building in continuous use in the United States, the King William County courthouse, dating to about 1725. Many circuit court clerks have records dating to colonial times. Northampton County, for

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**Figure 3: Virginia Courthouses Vary in Age, Size, Appearance, and Layout**

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Left to right, top to bottom: Nelson County<sup>a</sup>, (1809, with 1940 and 1968 additions); Lancaster County<sup>a</sup> (1861, with newer additions); Appomattox County (portion with steeple, 1892; portion on left, 2008); Surry County<sup>a</sup> (1923, renovated 2009); Portsmouth (1960s); Henrico County (1970s).

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Left to right, top to bottom: Richmond City (1974); Isle of Wight County (1980s); New Kent County (1992); Rockbridge County (2009); Augusta County<sup>a</sup> (1910); Fairfax County (new portion opened 2009).

<sup>a</sup>On Virginia's Landmark Registry and the National Register of Historic Places.

Source: JLARC staff; Department of Historic Resources; Fairfax County website ([www.fairfaxcounty.gov](http://www.fairfaxcounty.gov), accessed 9/18/09).

example, claims the oldest continuous court records in the United States, dating from 1632. Figure 3 illustrates some of the variation in age, appearance, and layout among Virginia's current courthouses.

The idea of what constitutes a courthouse has evolved over the past 300 years. According to *Virginia's Historic Courthouses*, by John O. and Margaret T. Peters,

the typical colonial courthouse complex had a jail, a pillory, a pair of stocks, and a whipping post near the courthouse, and 'a ducking-stool in such place as the court may think convenient.' Before the Revolution county records sometimes were kept in the jury room, but they were just as likely to be found at the clerk's home or even at the local tavern.



Today, instead of courthouses, we build 'judicial centers' and 'governmental complexes.' Many modern courthouses look more like mammoth office buildings, with little symbolic or traditional significance and show even less regard for what we used to call the 'majesty of the law.' With limited funds, the balance is often struck in favor of efficiency and security, and surely not metaphoric significance. As much as ever, our courthouses are a reflection of society, and it is not an altogether pretty picture.

Today there is significant variation about what is included in a courthouse. In total, there are more than 170 courthouses in Virginia. A JLARC staff survey of circuit and district court clerks found that a variety of offices and functions are housed in the court buildings (Table 3).

According to circuit court clerks, the primary functions housed in the main court facility include circuit and district courtrooms, judges' offices, clerks' offices, and holding cells. In addition, over half reported that the Commonwealth's Attorney's office is located in the main court facility. (The Commonwealth's Attorney prosecutes criminal cases and is a constitutional officer elected to a four-year term.) Among other functions housed in the court facility, the most commonly cited were the county treasurer and commissioner of revenue. The vast majority of circuit (90 percent) and district (94 percent) court clerks reported that their offices are in the same building as their respective courtrooms.

**Table 3: Functions Housed in Circuit Court Building**

<b>Function</b>	<b>Percent of Circuit Court Buildings With Function</b>
Circuit Court Judge's office	97%
Circuit Court clerk's office	90
Records storage	82
District Court courtroom	75
District Court clerk's office	75
District Court Judge's office	74
Holding cells	71
Commonwealth's Attorney's office	58
Court services unit staff (juvenile)	45
Other (Treasurer, Commissioner of Revenue)	34
Sheriff's office	33
Probation officers (adult)	18
Magistrate's office	18
City/county administrator	15

Note: 89 circuit court clerk responses. By definition, the circuit court building contains the courtroom(s) for the circuit court.

Source: JLARC staff survey of circuit court clerks.

While some localities have stand-alone courthouses for their district courts, most house their district and circuit courts together. About 70 percent of localities appear to have one courthouse, while 24 percent have two courthouses, and six percent have three or more courthouses. When the district courts are housed separately from the circuit court, that building typically houses the district courtrooms, judges, and clerks, and in some cases court services unit staff, Commonwealth's Attorney's office, and, occasionally, the sheriff's office, magistrate's office, or local social services. Court services units provide probation, intake, and parole services, as well as community-based and support programs, for the juvenile domestic relations courts.

There are two fees aimed at courthouse maintenance and construction that may be charged by the courts. Under a statute first adopted in 1990 (*Code of Virginia §17.1-281*), localities may assess up to a \$2 fee on all civil, criminal, traffic, and local ordinance cases. Most localities refer to this as a maintenance fee, although the statute permits it to be used for construction.

Under legislation adopted in 2009, localities may assess an additional \$3 fee per case, for courthouse construction only, if the Department of General Services (DGS) certifies its courthouse as non-compliant with the *Virginia Courthouse Facility Guidelines*, developed by the Virginia Supreme Court. Localities reimburse DGS for its costs in complying with the certification request. The circuit

court clerk is responsible for collecting courthouse fees and transferring them to the local treasurer.

### **Circuit Court Judge Can Order a Locality to Improve Court Facilities**

The *Code of Virginia* sets out a process that can be used to compel improvements to a court facility. Dating at least to the early 1900s, this process seems intended to resolve the reluctance by some localities to update and upgrade court facilities. The process continues to play this role in many localities, as discussed in more detail in Chapter 4.

The 2009 General Assembly placed language in the Appropriation Act (Item 40F) delaying through June 30, 2010—if the local governing body requests—all changes or improvements to court facilities required by this *mandamus* process. It is unclear that any localities qualify for this exemption.

## **OTHER REVIEWS OF THE COURT SYSTEM AND FUNDING**

The most recent comprehensive assessment of court funding and the court system was the January 2007 final report of the Commission on Virginia Courts in the 21<sup>st</sup> Century (also called the “Futures Commission”). This commission was initiated in 2005 at the request of the Chief Justice and involved several task forces with numerous members. Four legislators were “honorary” but not voting members of the commission.

The commission’s 194 recommendations generally call for improved efficiency and consistency across the State, as well as increased State funding. The commission also recommended replacing elected circuit court clerks with professional court administrators appointed by the circuit judges. The Supreme Court is currently reviewing the report and its recommendations.

There is also a joint subcommittee to study the operations of circuit court clerks’ offices, first established by SJR 335 in the 2005 General Assembly, and extended several times since. The 2009 General Assembly again extended the 13-member joint subcommittee, with SJR 359 calling for a final report by November 30, 2009.

### **Prior JLARC Studies of the Court System**

JLARC has previously addressed only limited aspects of the court system. The most recent study was a 1997 review of the feasibility of modernizing land records in circuit court clerks’ offices.

Several studies were completed under the auspices of a 1995 study resolution, including reviews of the magistrate system and State Bar. The 1995 General Assembly adopted SJR 263, which directed a review of the administration of justice function of government, including “the system of courts in Virginia.” The broader review apparently contemplated by the resolution was not undertaken, however.

In 1990-1991, JLARC completed a series of reports dealing with the funding of the constitutional officers, including a review of statewide staffing standards for the offices of the circuit court clerks. That report suggested reallocating positions in the clerks’ offices based on workload, and identified a need for 61 more staff positions than were recognized by the State Compensation Board. Board staff recently indicated that many of the recommendations from the 1991 JLARC report have been implemented.



# Chapter 2

## State Expenditures for Courts Exceed State Court Fee Revenues

### In Summary

The Commonwealth is the primary source of funding for district and circuit courts, their clerks, and sheriffs. Appropriations to the Supreme Court fund district judges, district clerks, and circuit judges. Appropriations to the Compensation Board funds circuit court clerks and court security provided by sheriffs. In FY 2008, the State spent a total of \$411.6 million for these functions. Through their operations, courts generate substantial State revenues. The State received revenue from courts totaling \$750.9 million in FY 2008, \$449.9 million or 60 percent of which was State recordation tax collections. Excluding recordation tax and special fund collections, which are used for general government purposes and not to defray court operating costs, district and circuit courts collected \$212.1 million in court fee revenue in FY 2008. Thus, the State spent \$199.5 million more to operate the district and circuit courts than it received in court-related fee revenue.

Taxes and fees collected by courts are mostly used for broad governmental purposes. State revenues collected by district and circuit courts are, for the most part, deposited into the State's general fund. Criminal fines collected by the courts have been deposited into the State literary fund which, from its inception in the 1800s, has been used exclusively for educational purposes. There are also several fees which are deposited into special funds and used only for statutorily authorized activities.

There is no statutory or other basis in Virginia for suggesting that district and circuit courts should be self-sustaining financially. Judges and most clerical staff have been paid from State general fund revenues for decades. Although court clerks' operations were funded in the past on a fee-for-service basis, that approach ended for the district court clerks with court unification in 1973. This practice also ended for circuit court clerks with statutes that took effect in 1992, although some vestiges remain in circuit court clerks' operations. Today, the district and circuit judges, as well as the respective clerks' operations, are funded from State and local general fund sources.

### **THE STATE PAYS MORE FOR DISTRICT AND CIRCUIT COURTS THAN IT RECEIVES IN COURT-GENERATED FEE REVENUE**

In FY 2008, the State received \$750.9 in court-generated revenue. Of this revenue, approximately \$212.1 million came in the form of fee collections that were assessed for the provision of court services, and subsequently deposited into the general fund. The re-

maining State revenues were collected for general government purposes, and these include recordation taxes (\$449.9 million), fines deposited into the literary fund (\$65.2 million), and other special fund revenues (\$23.7 million). When State expenditures on district and circuit courts, which totaled \$411.6 million in FY 2008, are compared to State court-generated fee revenues deposited into the general fund, in FY 2008 the State spent approximately \$199.5 million more on district and circuit courts than it received in fee revenue.

### **Taxes and Fees Collected by Courts Are Used for General Government Purposes, Not to Defray Court Operating Costs**

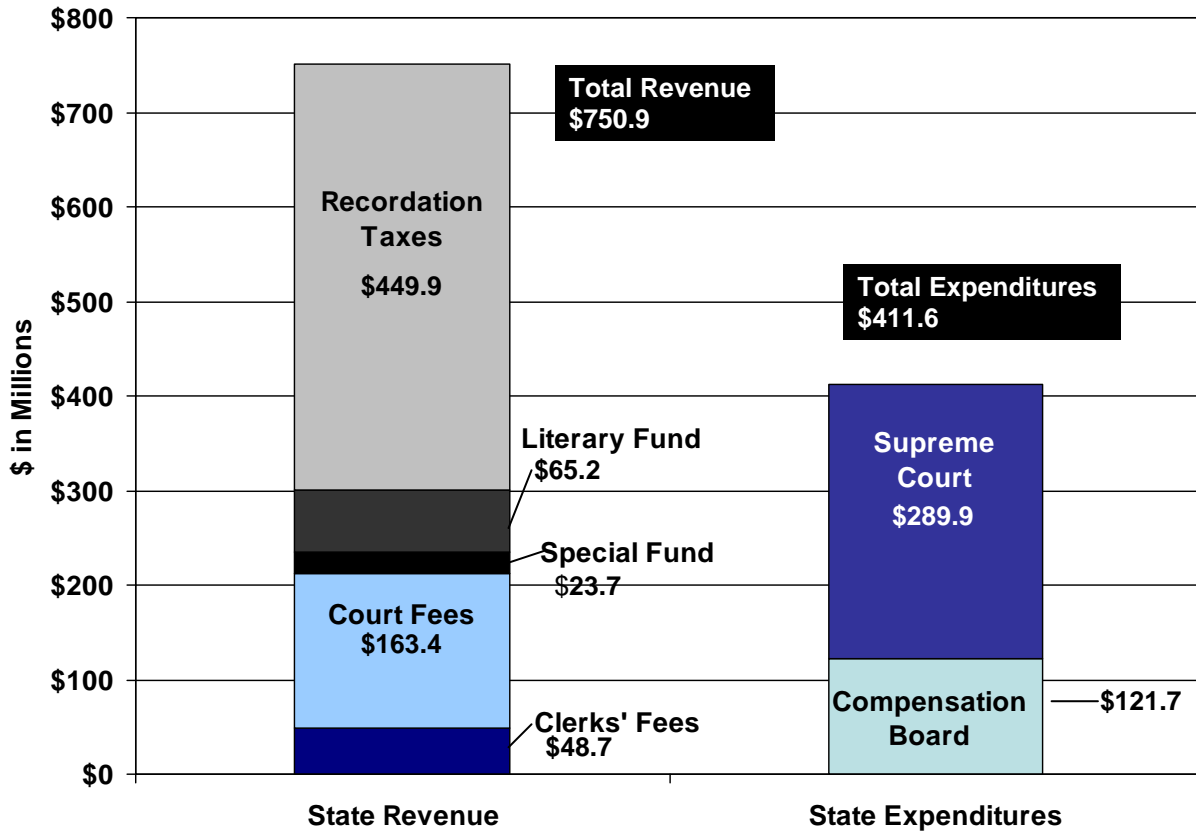
Fees and fines, as well as their distribution once collected, are set out in the *Code of Virginia*, with most fees and fines assessed by the district courts found in §16.1-69.48, and those assessed by circuit courts set out in §17.1-275. Fines for felony and misdemeanor convictions are set by statute in §18.2-10:11, with additional fines defined in other statutes. District and circuit court clerks are responsible for collecting all fees and fines emanating from their respective courts. Circuit court clerks are responsible for transferring all district and circuit revenues to the appropriate State and local treasury accounts. Circuit court clerks are also required by statute to collect State and local recordation taxes and fees and transmit these revenues to their appropriate treasuries.

State general fund revenues from court collections can be broadly categorized as recordation taxes assessed on contracts, deeds and wills; fees assessed in civil and criminal cases; and fees assessed and collected for services provided by circuit court clerks.

Recordation tax collections totaled \$449.9 million in FY 2008, and represented the largest single State revenue source collected by the courts (Figure 4). These taxes are levied on land transactions recorded by circuit court clerks, and are included in the Supreme Court's financial management system as court revenues. However, these taxes are not levied for the purpose of defraying the State's costs of court operations. Reporting these taxes as court revenues creates an inflated sense of the amount of revenue generated through the courts' adjudication process in civil and criminal cases.

A more accurate picture of court-related revenues is found in the collection of court fees. Some court fees appear to be assessed to defray the costs of court processes. Fines, however, are generally levied as a punitive measure for violations of civil and criminal laws. Fee collections generated general fund revenue of \$163.4 million in FY 2008, as noted in Figure 4. Although the various fees and fines collected are assessed for specific purposes and are often individually set out in the *Code of Virginia* (examples include the

**Figure 4: State Court Revenues and Expenditures on District and Circuit Courts, FY 2008 (\$ in millions)**



Source: APA Commonwealth Data Point, Supreme Court Financial Management System.

drug enforcement fee and the civil filing fee), the vast majority of fee collections are treated as any other general fund revenue.

Court clerks also collect revenues that are deposited into various State special funds. These revenues are used for the specific purposes described in their authorizing legislation, and are not available for general fund purposes without approval of the General Assembly. The literary fund, which serves as a source of low cost loans to local school divisions for educational purposes, is funded by court fine collections, and received approximately \$65.2 million in revenues in FY 2008. Examples of smaller special funds include the criminal injury compensation fund, the courts technology fund, and the clerks' technology trust fund. Such funds collected revenues of \$23.7 million in FY 2008 (Figure 4).

***Circuit Clerks' Fees Are a Source of State General Fund Revenue.*** In addition to the collection of Commonwealth and local revenues, statutes authorize circuit court clerks to collect several fees and

commissions. These appear to be intended for recouping costs associated with the provision of services required by statute, although these fees do not appear to reflect the true costs of performing the various services for which they are levied.

The clerk of the circuit court is authorized by the *Code of Virginia* §17.1-275 to collect 40 distinct fees “for services performed by virtue of his office.” Clerks also receive a commission of five percent on Commonwealth revenues collected in the district courts of up to \$50,000, and a three percent commission on greater amounts. Finally, circuit clerks collect a five percent commission on all local revenues collected by their offices. Clerks’ commission revenues are included in the calculation of clerks’ excess fees.

Clerks’ fees are a source of general fund revenue for the Commonwealth, because the State keeps all circuit court clerks’ fee collections except for the local portion of the excess clerks’ fees. From this single source, the State received approximately \$48.7 million in FY 2008, including \$11.7 million of excess clerks’ fees (Figure 4).

The process by which the Compensation Board calculates and distributes excess clerks’ fees is complicated, with many aspects of the process developed prior to 1992, when circuit courts clerks’ operations were supported primarily by fee revenue. In general, excess fees result when total clerks’ fees collected by a circuit court clerk exceed the portion of that clerk’s expenditures reimbursed by the Compensation Board.

In 2009 the General Assembly changed the distribution of excess fees between the State and localities, beginning with FY 2010. Prior to the change, localities were allowed to keep two-thirds of excess fees with the State receiving the remaining one-third. The change adopted by the General Assembly reversed the allocation ratio (the Prince William County circuit court clerk was excluded from this action).

Three localities keep all clerks’ fees collected by their circuit court clerks. The *Code of Virginia* §17.1-288 exempts Richmond City and Newport News from participation in the excess fees process, and Roanoke City is exempted by a provision in its city charter (city charters are also approved by the General Assembly). Although these cities keep all clerks’ fees, each is required to pay salaries no less than those provided to other clerks by the Compensation Board. These localities are also responsible for providing support for clerk positions.

The APA, in the 2007 report, *Collections and Costs of Operating the Circuit and General District Courts by Locality*, recommended replacing the process by which excess fees are calculated. The APA

suggested establishing a Compensation Board-determined baseline minimum collection expected for each circuit court clerk, and requiring the clerk to allocate any amount above the minimum to the State and locality. The APA also noted the Compensation Board lacks access to the data to verify the current calculations required of clerks as part of the process.

***Technology Trust Fund Supports Circuit Clerks' Land Records Management Systems.*** The clerks' technology trust fund (TTF) was established in 1996 to provide a dedicated source of funding for clerks to digitize the land records transaction process, and to provide remote access to land records for users paying a \$50 per month fee (*Code of Virginia* §17.1-279). Clerks collected a total of \$9.1 million of TTF fees in FY 2008, and spent \$9.9 million of TTF funds in the same fiscal year.

The TTF is funded by a \$5 fee assessed by circuit court clerks "in every law and chancery action, upon each instrument recorded in the deed book, and upon each judgment docketed in the lien docket book." Four dollars of the fee are allocated to the respective clerks' offices for use in fulfilling the goals of the TTF. The remaining dollar of the TTF fee is deposited into a fund known as the \$1 Fund, from which disbursements are made to individual clerks' offices "whose deposits into the trust fund would be insufficient to implement its modernization plan."

The Compensation Board is responsible for administration of TTF monies, including approving the clerks' TTF budgets and the projects for which clerks may use these revenues. Most of the 17 circuit court clerks interviewed by JLARC staff noted that this is the only source of funds over which clerks are granted autonomy, as they are authorized to choose both the method of records storage and the vendor providing land records IT systems.

Not all TTF collections have been used to support the purposes of digitizing land records and providing remote access to land records technology. Since 2006, the General Assembly has included language in the Appropriations Act that authorizes the transfer of TTF collections to the Compensation Board's budget for the circuit court clerks. In each of FYs 2006 through 2008, \$1.5 million was transferred from the TTF to the Compensation Board, with the amount doubled to \$3 million for FY 2009 and FY 2010. The transfer is intended to offset the effects of clerks' budget reductions in FY 2004 and in the 2008-2010 biennium.

***Most Circuit Court Clerks Elect to Use Supreme Court IT Systems.*** Circuit court clerks, as constitutional officers, may individually choose the information and records systems with which they administer the circuit courts. Of the 120 circuit courts, 117 use the

Supreme Court's case management system (CMS), and all use its financial management system (FMS, although Fairfax County only uses it for batch reporting), and 75 use the records management system (RMS). The case management system is a collection of software that is used to manage court cases at all levels of the Virginia court system. All accounting for court collections, fines and costs, and land recordation fees are handled by the financial management systems. The records management system is operated only by circuit courts, and is used to provide secure remote access to local land records.

Clerks can use TTF monies to purchase equipment and services to run the Supreme Court's RMS; 75 currently use this system, while 45 have chosen to contract with private vendors for these systems. In interviews with JLARC staff, clerks have noted that although it is affordable and effective, use of RMS requires clerks' staff to back scan older records and otherwise administer the system, while private vendors perform these tasks as part of their contractual duties. Several clerks in localities with a high volume of land records transactions claim that RMS cannot efficiently or effectively handle their workload.

Most circuit court clerks stated that they intend to continue use of these systems for at least the next five years. Of the 87 clerks that responded to the JLARC staff survey, 83 use the Supreme Court case management system, 86 use Supreme Court financial management system, and 58 currently use the Supreme Court records management system. Of those using the Supreme Court CMS and FMS, 76 and 79 responding clerks intend to keep using the systems, respectively. For the Supreme Court RMS, 55 circuit court clerks expect that they will still be using the system for the next five years.

### **The Commonwealth Is the Primary Source of Funding for District and Circuit Court-Related Functions**

The budgets of the Supreme Court and the Compensation Board serve as the vehicles for State support of district and circuit court operations. The Supreme Court budget is the channel for State funding of the district and circuit courts, while the Compensation Board is responsible for establishing the budgets of circuit court clerks and sheriffs, and reimburses localities for expenses incurred by circuit clerks' offices. As noted in Table 4, in FY 2008, total direct State spending on district and circuit courts was \$411.6 million.

**Table 4: Total State Expenditures for District and Circuit Courts, FY 2008 (\$ in millions)**

	FY 2008
Supreme Court	\$289.9
Compensation Board	121.7
<b>Total</b>	<b>\$411.6</b>

Source: APA Commonwealth Data Point.

***Supreme Court Funds Most District and Circuit Court Operations.***

The Supreme Court is responsible for providing salaries, day-to-day operating guidance, and information technology support to the district and circuit courts. The Supreme Court has had these responsibilities since at least the 1973 reorganization of Virginia’s court system. Supreme Court expenditures on district and circuit courts totaled \$289.9 million in FY 2008 (Table 5). District courts are the largest area of expenditure for the Supreme Court, with a total cost of \$200.4 million in FY 2008. Supreme Court spending on circuit courts was \$89.5 million in FY 2008.

Personnel costs represent the largest expenditure category for district and circuit courts, at 58 percent in FY 2008. The number of personnel in the district and circuit courts has increased by 7.6 percent since FY 2000, from 1,840.5 to 1,980.65 FTEs. General district courts experienced the largest personnel growth, 11.4 percent, compared to a reduction of 7.3 percent in the combined district courts. This is higher than the 5.3 percent growth in total State personnel for the same period. The circuit courts have received nine additional judgeships in the period, now totaling 164.

***The Compensation Board Reimburses Localities for Staffing Costs of Circuit Court Clerks and Sheriff Court Security.***

The Compensation Board, in providing support for the operations of circuit court clerks and the provision of sheriff court security, reimbursed localities for \$121.7 million in FY 2008 (Table 6). Board expenditures on clerks and sheriffs are primarily for the salaries of the officers and

**Table 5: Total Supreme Court Expenditures for District and Circuit Courts (\$ in millions)**

	FY 2008
Circuit Courts	\$89.5
General District Courts	93.0
Juvenile & Domestic Relations Courts	77.8
Combined District Courts	29.5
<b>Total Expenditures</b>	<b>\$289.9</b>

Source: APA Commonwealth Data Point.

**Table 6: Total Compensation Board Expenditures for Court-Related Functions (\$ in millions)**

	FY 2008
Circuit Court Clerks	\$51.9
Sheriff Court Security	69.8
<b>Total</b>	<b>\$121.7</b>

Source: APA *Commonwealth Data Point*.

their employees, as localities typically provide funding for constitutional officers’ expenses, employees’ fringe benefits, and various operational costs.

The Compensation Board is responsible for setting the budgets and providing reimbursements to localities based on these budgets for all constitutional officers, including the circuit court clerks and sheriffs. The Board also provides to sheriffs the State portion of costs associated with providing security to court facilities. Finally, the Board approves disbursements of clerks’ technology trust fund (TTF) monies.

The Compensation Board has funded the salaries and some operational expenses of circuit court clerks since 1992. Annually, each clerk submits a budget request to the Board. Based on appropriations, the Board then sets a budget for each clerk’s office, which caps State support for salaries and operations. Localities directly pay clerks’ salaries and operating expenses and are required to provide at minimum the amount the Board budgets for each clerk’s office. The Board, on a monthly basis, reimburses localities for the Board-approved amounts for salaries and operating expenses. A similar process is used to fund the operations of sheriffs’ offices.

Prior to 1985, circuit court clerks’ salaries and operational expenses were funded almost exclusively through the collection of fees levied for various services performed by the clerks. Between 1987 and 1992 the Board provided funding only to clerks’ offices deemed to be “in deficiency,” that is, where the amount of fee revenue generated by the clerk was insufficient to fully support the Board-approved budget.

The Board has distributed funding under its current model since 1992, with a modification of its staffing standards in 2007 first implemented in its FY 2008 budget. Although not fully funded, the staffing standards tend to ensure circuit court clerks’ offices a minimum level of support divorced from the amount of fees generated by their offices and the amount of support provided by localities, both of which vary greatly across the State.

Compensation Board support for circuit court clerks is primarily for full-time staff salaries. The Board provides little support for fringe benefits for clerks and their staff, as these are typically provided by localities. Approximately 4.5 percent of Board expenditures in FY 2008 on clerks and clerks' staff were for fringe benefits. Board expenditures on clerks' office expenses were less than one percent of total expenditures in the same period.

In FY 2008 there were a total of 317 total sheriff court security positions in Virginia, as estimated by the Compensation Board. The State provided financial support for 151 sheriffs' deputy positions for the purposes of providing court security, including 46 positions for which the Compensation Board is the sole source of support. These positions account for less than half of the 317 total sheriff court security positions statewide. By comparison, localities supplemented the salaries of 271 sheriff court positions, including 166 positions for which localities are the sole source of support. Localities' data provided by the Compensation Board did not identify the dollar amounts in salaries provided by the State and localities.

***Compensation Board Funding for Circuit Court Clerks Has Been Subject to Cuts Not Experienced by the Supreme Court.*** Because circuit court clerks are supported by the Compensation Board, they are subject to budget reductions similar to those faced by other executive branch agencies. Recent reductions to circuit court clerks have been larger than those experienced by the district and circuit courts, and circuit court clerks' budgets have been restored more slowly following a reduction than for the Supreme Court. The different budget dynamics faced by circuit court clerks have created an environment in which the administration of some parts of Virginia's court system has seen large and persistent budget reductions while other operational areas experience milder cuts that are quickly restored.

In the FY 2002-2004 budget reductions, circuit court clerks were subject to an 11 percent reduction in appropriations, resulting in a general fund reduction of approximately \$4.3 million in FY 2004. In the same fiscal year, appropriations for Supreme Court support of district and circuit courts were reduced by approximately \$1 million, which represented less than one percent of total appropriations for the district and circuit courts. Funding for circuit court clerks returned to pre-reduction levels in FY 2007, and only for salaries and other non-operational costs. This is in contrast with district and circuit court budgets, for which the FY 2004 reductions were more than fully restored in FY 2005.

In total, appropriations for circuit court clerks increased by 6.7 percent between FY 2003 and FY 2008, less than the 12.5 percent increase in appropriations (excluding appropriations for the crimi-

nal fund and involuntary mental commitment fund) for district and circuit courts in the same period. As discussed in Chapter 3, coincident with the FY 2004 budget reduction and slow budget growth in the FY 2003 to FY 2008 period, localities have unevenly assumed an increasing share of funding the personnel and operating costs of circuit court clerks.

**SOME COURT FEES COULD POTENTIALLY RECOUP OPERATIONAL COSTS**

While there is no statutory basis requiring court fee collections to be sufficient to cover the State’s costs of operating the district and circuit courts, court fees could potentially cover more of the State’s costs. One state (Louisiana) currently funds court operations entirely from fees. As noted earlier, in the past Virginia covered the operations of courts with fee revenue.

*State revenue from court fee and fine collections is currently insufficient to cover the costs of operating Virginia’s district and circuit courts.*

State revenue from court fee collections is currently insufficient to cover the costs of operating Virginia’s district and circuit courts. In FY 2008, district courts collected \$130.5 million in State general fund fee revenue, \$69.9 million less than the \$200.4 million in State expenditures (Table 7). In comparison, State expenditures for circuit courts and circuit court clerks totaled \$137.4 million, substantially more than the \$81.6 million in State general fund fee revenue generated by the circuit courts. Court security costs have been excluded due to the difficulty in assigning these costs to the district and circuit courts individually.

**Table 7: State Expenditures for District and Circuit Courts Exceeded State Fee Collections, FY 2008 (\$ in Millions)**

<b>Court</b>	<b>Expenditures</b>	<b>Fee Revenues</b>	<b>% Difference</b>
District Courts	\$200.4	\$130.5	34.9%
Circuit Courts	137.4	81.6	40.6
<b>Total</b>	<b>\$337.8</b>	<b>\$212.1</b>	<b>40.2%</b>

Source: APA Commonwealth Data Point, Supreme Court Financial Management System.

Court fees are set out in a variety of statutes, including, for example, a fee for issuing marriage licenses, fixed felony fees assessed upon felony convictions, and copying fees charged by circuit court clerks. These fees do not necessarily reflect the cost of providing court services; several examples are provided in Table 8. For instance, in interviews with JLARC staff, several circuit court clerks noted that the \$0.50 per page copying fee charged by their office generates far less revenue than clerks’ offices spend for this service.

**Table 8: Examples of Fees Collected to Defray Court Costs (*Code of Virginia §17.1-275*)**

Court Fee	Amount
Circuit Clerks' Copying Fee	\$0.50 per page
Indexing and Preserving a Will	\$2
Making a bond	\$3
Administering an oath	\$3
Fixed Felony Fee	\$350 per conviction
Fixed Misdemeanor Fee	\$70 per conviction

Source: *Code of Virginia*.

The use of the term “fees” may suggest an intent to cover the cost of the specific service, although several circuit court clerks suggested to JLARC staff that costs are only one factor considered by the General Assembly in setting these fees. The 2007 report of the *Commission on Virginia Courts in the 21<sup>st</sup> Century*, alluded to this consideration, stating that “Virginia should ensure filing fees are not an economic barrier to access to its courts.” Access is a particular concern in civil cases, where costly filing fees may prevent individuals from using courts to address grievances. Filing fees in civil cases such as divorces and contract disputes of less than \$50,000 are typically \$84.

**Judicial Council**

The Judicial Council of Virginia is responsible for continuously studying the organization, rules, procedures, and practice of the judicial system of the Commonwealth of Virginia. It is responsible for examining the work accomplished and results produced by the judicial system, including the Office of the Executive Secretary and individual courts.

It is also the case that fees are not systematically or routinely adjusted to reflect changes in the expenses of providing court services. The costs of operating the courts have increased along with inflation and other factors. If some fees were increased to better reflect the costs of court services, fee waivers could be provided based on need to allay concerns about economic barriers to the courts; in fact, such fee waivers are already granted by the Supreme Court when deemed appropriate.

**Recommendation (1).** The Judicial Council of Virginia should review court fees set out in the *Code of Virginia* and recommend to the General Assembly a schedule of fees which provides for appropriate recovery of court operating costs while balancing concerns related to access to court services and the judicial process.



# Chapter 3

## Local Expenditures for Courts Exceed Local Court Fee and Fine Revenues

### In Summary

Statutes require localities to provide office and court space for district and circuit court personnel. Localities are authorized to provide salary and operating supplements for district court clerks, circuit court clerks' offices, and sheriff court security. In FY 2008, localities spent at least \$184.4 million for these functions, not including local expenditures on capital maintenance, renovation, and construction. In the same year, localities collected \$333.7 million in court revenues, including \$159.9 million in recordation taxes. Excluding recordation taxes, in FY 2008 localities received \$173.8 million in fee and fine revenues. Statewide, localities' court operating expenditures were at least \$10.6 million greater than fee and fine collections, and likely considerably more. In fact, approximately 55 percent of localities spent more on courts than they received in fee and fine revenue. Lack of comprehensive data on capital expenditures makes it difficult to identify total local expenditures on courts.

Localities share responsibility with the State for funding the operations of district and circuit courts. Localities are required by the *Code of Virginia* to provide office and courtroom space for all courts and constitutional officers presiding within their jurisdictional boundaries. Localities are also authorized to supplement the salaries and operations of district and circuit court staff, as well as other constitutional officers.

### LOCAL EXPENDITURES FOR DISTRICT AND CIRCUIT COURTS ARE GREATER THAN LOCAL FEE AND FINE REVENUES

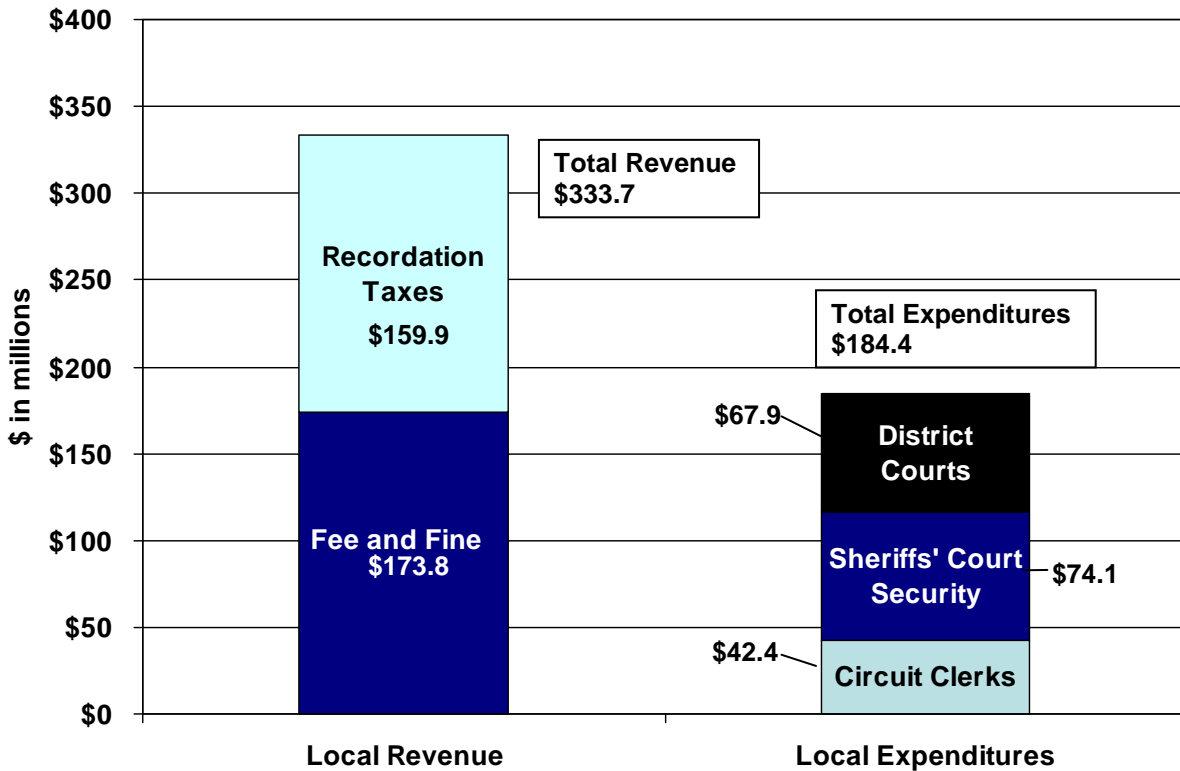
Statewide, localities spent at least \$184.4 million in FY 2008 on the operations of district and circuit courts, clerks of the circuit court, sheriff court security, and magistrates, according to the APA's *Comparative Report*. This does not include local expenditures on court-related capital maintenance, renovation, and construction projects, which will be discussed in Chapter 5.

District and circuit courts generate substantial amounts of revenue for localities, including fees for providing court services, fines for violations of local ordinances, and the collection of local recordation taxes. A total of \$333.7 million in local revenue was collected in FY 2008 (Figure 5).

Local recordation taxes represent the largest single portion of local revenue collections in district and circuit courts, totaling \$159.9 million in FY 2008. As discussed in Chapter 2, circuit clerks collect

State and local recordation taxes, and their collection of these taxes inflates total collections in district and circuit courts. Recordation taxes are assessed on land transactions and are not related to civil or criminal cases. Recordation taxes are a source of general revenue and are not intended to defray the costs of court operations.

**Figure 5: Local Court-Generated Revenues and Expenditures on Courts, FY 2008**  
 (\$ in millions)



Source: APA Comparative Report, Supreme Court Financial Management System.

After excluding local recordation taxes, localities received \$173.8 million in FY 2008 in revenues from court fees and fines. These amounts reflect the revenues received by localities through courts' consideration of civil and criminal cases, and more accurately describe revenue collections intended to defray local costs of operating district and circuit courts.

Similar to the State, most localities spend more on the operation of district and circuit courts than they receive in fee and fine revenues from court-related activities. However, these figures underestimate local spending on the courts, as it excludes local expendi-

**In FY 2008, localities received at least \$10.6 million less in fee and fine revenues than they paid for the operations of district and circuit courts.**

tures for capital maintenance, renovation and construction, which are not measured by any State agency. Examples of capital maintenance include the replacement of expensive systems like elevators and building chillers. In FY 2008, localities received at least \$10.6 million less in fee and fine revenues than they paid for the operations of district and circuit courts.

In FY 2008, most localities had total operating expenditures on court-related functions greater than the fee and fine revenues generated by the courts and circuit court clerks. Approximately 55 percent of localities, or 68 of the 124 for which revenues are identified by the Supreme Court financial management system, paid out more than they received in court revenue. Operating expenditures compared to revenues from court operations varied greatly by locality, with Virginia Beach receiving \$11.4 million more from court revenue than its expenditures on court operations, and Fairfax County spending \$16.7 million more on district and circuit courts than it received in fee and fine collections (Table 9).

**Table 9: Difference Between Local Court Expenses and Local Court Revenues Varies by Locality, FY 2008 (\$ in millions)**

<b>Top Five</b>	<b>Net Difference</b>	<b>Bottom Five</b>	<b>Net Difference</b>
Virginia Beach	\$11.4	Fairfax County	(\$16.7)
Wythe	2.9	Alexandria	(\$9.2)
Greensville	2.8	Richmond City	(4.7)
Henrico	2.7	Chesapeake	(4.0)
Sussex	1.8	Arlington	(3.4)

Note: Difference is equal to court-generated fee and fine revenue less expenditures.

Source: APA *Comparative Report*, Supreme Court *Financial Management System*.

While differences between local collections and local spending on courts were within six percent in FY 2008, it is premature to conclude that this means they are approximately balanced. First, the data is self-reported, is not audited, and is known to contain errors (for example, several localities reported negative spending). Second, the data excludes capital spending, which would significantly alter the ratio of costs and revenues in the case of localities that are constructing or renovating court facilities. Third, local changes in spending or in collections could also alter the balance. Finally, several years' worth of data would be necessary to conclude that, in general, revenues and spending are relatively in balance.

**LOCALITIES RECEIVE SUBSTANTIAL REVENUES FROM OPERATIONS OF DISTRICT AND CIRCUIT COURTS**

Total local court revenues were \$333.7 million in FY 2008 (Table 10). This revenue is in addition to the \$750.9 million generated by

the courts for the Commonwealth. Based upon interviews with local officials, local court revenues are typically deposited in the local general fund after they are transferred by the circuit clerk.

**Table 10: Total Local Court Revenue Collections (\$ in millions)**

	<b>FY 2008</b>
District Revenues	\$82.7
Circuit Revenues	251.0
<b>Total</b>	<b>\$333.7</b>

Note: Includes local portion of clerks' excess fee distribution.

Source: Supreme Court *Financial Management System*.

Similar to the State, local revenues from district and circuit courts derive from local recordation taxes and local court fees and fines. Local revenues generated through court operations are collected by both district and circuit court clerks, and circuit court clerks transfer receipts from all courts to the local treasury at least once per calendar month.

Local recordation taxes are the largest single source of local revenue in courts. Collections totaled \$159.9 million in FY 2008. These taxes are levied on land records transactions, and are collected by circuit court clerks.

Localities also collect revenues from the distribution of excess clerks' fees. In FY 2008, localities received \$23.4 million from clerks' excess fees. Circuit court clerks receive a five percent commission on local revenues collected in the courts, which are accounted for as clerks' fees, as explained in Chapter 2. Of total circuit clerks' fees, localities only receive the local share of excess fees. In the past, localities received two-thirds of excess clerks' fees, with the State receiving the remaining third. Beginning with FY 2010, the ratios will be reversed, with localities receiving one-third of excess fees. (Prince William County was exempted from this change. Additionally, the cities of Richmond, Newport News, and Roanoke retain all clerks' fees.) Current economic conditions are likely to lead to additional reductions in excess fees collected by localities.

In interviews with JLARC staff, circuit court clerks and local administrators stated that local court revenue collections are generally not a factor in designing local court budgets. In smaller localities, however, excess fees and other circuit clerks' collections may be a factor in the allocation of resources to circuit court clerks' operations. It appears that local officials seek to minimize any public perception of court budgets being driven by the revenues they collect.

**LOCAL COSTS OF OPERATING DISTRICT AND CIRCUIT COURTS ARE SUBSTANTIAL**

District and circuit court-related functions receive substantial support from local government. Localities are responsible for providing offices and court facilities for the use of all district and circuit court personnel, as well as for all constitutional officers. No State funds are available for these purposes, although localities are authorized to levy three fees for the express purpose of partially defraying these costs. The *Code of Virginia* §15.2-1656 also requires localities to furnish circuit court clerks with supplies and equipment for the operation of clerks’ offices. Finally, localities typically provide financial support for the personnel working in court-related functions.

Although not required by the *Code of Virginia* to do so, localities provide salary and operational funding for circuit courts, sheriff court security, and for other court activities in addition to support provided by the Supreme Court and Compensation Board. According to data from the APA’s *Comparative Report*, localities spent a total of \$184.4 million for court functions in FY 2008 (Table 11).

Of the \$184.4 million spent by localities on court-related operations, localities spent the most on support of sheriff court security operations. Local support for this function was significant, totaling \$74.1 million in FY 2008 (Table 11). Sheriffs, who are local constitutional officers, are charged with providing security for court buildings and court staff, as well as holding and transporting inmates to and from court, and within court facilities.

Members of the Virginia Court Clerks Association (VCCA) told JLARC staff that local support of circuit court clerks ranges from “zero to very generous.” While support for circuit court clerks varies greatly by locality, localities collectively spent approximately \$42 million supporting circuit court clerks’ offices in FY 2008 (Table 11).

*Local support of circuit court clerks ranges from "zero to very generous."*

**Table 11: Total Local Expenditures for District and Circuit Courts (\$ in millions)**

	<b>FY 2008</b>
Circuit Court Clerks	\$42.4
Sheriff Court Security	74.1
District Courts (includes Magistrates)	67.9
<b>Total</b>	<b>\$184.4</b>

Source: JLARC staff analysis based on APA *Comparative Report*.

**Most Localities Support Personnel Costs for Court Operations**

Compensation Board data, while not tracking fringe benefits or operation support, show that between FY 2000 and FY 2008 the total local salary supplement for circuit court clerks’ operations, the number of localities providing a supplement, as well as the number of supplemented positions, all increased significantly. The number of localities providing supplements increased from 30 in FY 2000 to 74 in FY 2008, and the number of supplemented positions increased from 352 to 647 in the same period.

This trend suggests that more localities are accepting a larger role in funding circuit court clerks’ operations as the number of positions funded by the Compensation Board falls short of the number of positions required. This trend is likely related to the large reduction in State appropriations for circuit court clerks in FY 2004, which returned to pre-reduction levels over the next four fiscal years.

Due to the State and localities sharing responsibility for funding circuit court clerks, variation in local support of clerks’ offices leads to uneven resources across the court system. Two clerks’ offices, facing similar workloads, can potentially experience vastly different budget climates owing to differences in the fiscal conditions of localities.

Localities also supplemented nearly all sheriff court security positions in FY 2008, according to Compensation Board data. As discussed in Chapter 2, of 317 sheriff court security positions, localities supplemented 271, or 85 percent of all positions. Of the positions supplemented by localities, 166 positions were supported solely by local funds. This contrasts with the 151 positions supported by the Compensation Board, of which only 46 are solely funded by the State.

Localities spent at least \$56.3 million for the salaries of court-related personnel, the same amount spent for local fringe benefits support (Table 12). Local salary supplements for circuit court

**Local Expenditures on Clerks and Sheriffs**

Local expenditures for circuit court clerks and sheriffs were calculated by subtracting Compensation Board spending for these functions from the total expenditures reported in the APA’s *Comparative Report*. Due to data issues, local expenditures on court-related functions are likely underestimated in this analysis.

**Table 12: Local Supplements for Court-Related Salaries (\$ in millions)**

Function	FY 2008
Circuit Court Clerks	\$4.7
Sheriff Court Security	23.7
District Courts (including Magistrates)	27.9
<b>Total</b>	<b>\$56.3</b>

Source: JLARC staff analysis based on APA *Comparative Report*.

clerks and sheriff court security are provided in addition to Compensation Board salary support for these functions. According to the best available data, the APA’s *Comparative Report*, JLARC staff estimate that localities spent at least \$4.7 million in salary supplements for circuit court clerks, and \$23.7 million for sheriff court security. Localities also provided approximately \$27.9 million in salary supplements to district court and magistrates.

Local support for fringe benefits, according to the *Comparative Report* data, represented approximately 30 percent of identified local expenditures on courts in FY 2008. In fact, localities are the primary providers of fringe benefits to sheriffs and circuit court clerks. Fringe benefits include non-salary payments for employees’ health insurance and retirement benefits. As noted in Table 13, the \$18.0 million provided to circuit clerks in FY 2008 was far greater than the \$1.9 million in fringe-benefit support provided by the Compensation Board for the same fiscal year.

**Table 13: Local Supplements for Court-Related Fringe Benefits (\$ in millions)**

Function	FY 2008
Circuit Court Clerks	\$18.0
Sheriff Court Security	29.1
District Courts (including Magistrates)	9.2
<b>Total</b>	<b>\$56.3</b>

Source: APA *Comparative Report*.

**Local Expenditures on Maintenance and Other Non-Personnel Operating Costs Are Substantial, but Not Easily Discernible**

Localities are required by *Code of Virginia* §15.2-1638 to construct, operate, and maintain offices and court space appropriate for the use of district and circuit court personnel, as well as for all constitutional officers. While data and evidence collected by JLARC staff show that the costs to localities of performing these duties is substantial, local spending on court facilities is not fully known.

Local expenditures on non-personnel operating costs of district and circuit courts totaled \$71.8 million in FY 2008, according to APA *Comparative Report* data (Table 14). Non-personnel expenditures include costs incurred for minor maintenance and the purchase of office furniture, rentals and leases, internal service payments, contractual services, and other operating expenditures not going to employee salaries or benefits. Although these amounts lack some precision, they do indicate substantial spending by localities to fulfill their *Code*-required obligations to support court-related functions.

**Table 14: Total Local Expenditures for Non-Personnel Court Costs, FY 2008 (\$ in millions)**

	FY 2008
Circuit Court Clerks	\$19.7
Sheriff Court Security	21.3
District Courts (including Magistrates)	30.8
<b>Total</b>	<b>\$71.8</b>

Source: JLARC staff analysis based on APA *Comparative Report*.

Data from the *Comparative Report* does not explicitly identify local expenditures for the maintenance of court facilities, for several reasons. Local expenditures on court facilities from localities; however, local budgeting procedures and definitions of maintenance and operating expenditures vary greatly. In some localities courthouse maintenance and operating expenditures are made from a single, city- or county-wide fund, making it difficult or impossible to separate and identify such costs as incurred for court facilities. maintenance are not tracked by the Auditor of Public Accounts, the Supreme Court, or any other State agency. Therefore, any information on court maintenance must be collected individually.

It is also difficult to identify local expenditures for capital maintenance, renovation, and construction of court facilities. Local definitions of capital expenditures vary widely, and such expenditures are not tracked statewide. The topic of local court-related capital costs will be discussed in more detail in Chapter 5.

**LOCAL EXPENDITURES FOR COURT-RELATED FACILITY MAINTENANCE AND OPERATIONS ARE GREATER THAN THE FEE REVENUES GENERATED FOR THESE PURPOSES**

Localities receive revenues from three fees levied to defray local costs of providing facilities and services for court-related functions. These are the sheriff fees, the law library fee, and the courthouse maintenance fee. Statewide, localities collected revenues totaling \$30.5 million from these fees in FY 2008 (Table 15). These collections represent less than half of the \$71.8 million in non-personnel operating expenditures made by localities in FY 2008.

**Table 15: Local Receipts for Courthouse Maintenance, Law Library, and Sheriff Fees (\$ in millions)**

Fee	FY 2008
Courthouse Maintenance Fee	\$3.7
Law Library Fee	1.5
Sheriff Fees	25.3
<b>Total</b>	<b>\$30.5</b>

Source: Supreme Court *Financial Management System*.

Although localities received approximately \$25.3 million in sheriff fees in FY 2008, these revenues represent approximately 34 percent of total local expenditures for sheriff court security. Process and services fees, which are typically referred to as sheriff fees, are set out in the *Code of Virginia* §17.1-272. These fees are collected for process and service functions performed by sheriffs, which involves serving or delivering any court order not explicitly exempted from the fee. For example, these fees are retained by localities, and are to be used to support “services provided by such officers in the circuit and district courts.”

Localities are also authorized to assess a three dollar law library fee on all civil and criminal cases. Localities collected a total of \$1.5 million in law library fee revenue in FY 2008 (Table 15). The fee is intended to offset the local costs associated with providing a publicly-available law library for the jurisdiction. Staff at several localities interviewed by JLARC staff said receipts of the law library fee are deposited into the local library budget, as the local library in those localities is responsible for housing and providing access to the locality’s law library resources.

Statewide, localities collected courthouse maintenance fee revenues totaling \$3.7 million in FY 2008 (Table 15). Localities are authorized by *Code* §17.1-281 to levy up to two dollars for the courthouse maintenance fee on all civil and criminal cases in its courts, in order to support local expenditures for “construction, renovation, or maintenance of courthouse or jail and court-related facilities and to defray increases in the cost of heating, cooling, electricity, and ordinary maintenance.” All localities are currently collecting this fee, although not all localities levy the entire two dollars, and many do not levy the courthouse maintenance fee on all eligible cases.

While no statewide data exists on local expenditures on court facility maintenance, the following examples illustrate situations where court-generated revenues for courthouse maintenance were less than localities spent operating and maintaining court facilities.

### ***Case Studies***

*The Montgomery County Courthouse is a central courts building opened in 1979, housing the county’s general district, juvenile and domestic relations, and circuit courts. The building also houses the circuit clerk’s staff and records. According to county staff, in FY 2008 the county spent approximately \$250,000 for courthouse maintenance and operations, such as utilities and minor repairs. These expenditures exceeded by almost a factor of five the approximately \$55,000 in courthouse maintenance fee revenue*

*collected by the county in the same fiscal year. The county pays for courthouse maintenance through its general operating and maintenance budget, and deposits courthouse maintenance fee receipts into its general fund.*

\*\*\*

*The Stafford County courts building contains six courtrooms, and houses the county's general district, juvenile and domestic relations, and circuit courts. The county deposits courthouse maintenance fee revenue into its general fund, and pays for day-to-day operating and maintenance of the court facility from the general fund. Projects with a cost greater than \$50,000 are paid for from its capital budget. In FY 2008 the county spent approximately \$460,000 for the maintenance of its court building, far more than the \$36,000 it collected in courthouse maintenance fee revenue.*

\*\*\*

*The City of Richmond district and circuit courts are housed in four separate facilities. In FY 2008 the city received approximately \$286,000 in courthouse maintenance fee revenue. Richmond's expenditures on court maintenance and operations, totaling \$1.1 million in FY 2008, far exceeded its receipt of courthouse maintenance fee revenue. The city maintains a special fund for the maintenance of court facilities, funded exclusively by courthouse maintenance fee revenue. Because operating and maintenance costs exceed courthouse maintenance fee receipts, the city must use general fund dollars to cover all court facility costs.*

# Chapter 4

## Process for Courthouse Construction and Renovation

### In Summary

Court clerks from around the State report deficiencies with their courthouses, ranging from limited office space to inadequate security. Over 70 percent of clerks identified at least one courthouse problem, with almost half identifying security as a concern. Localities use a variety of means to identify and address courthouse deficiencies. However, judges do not always play a formal role in local capital planning processes and, consequently, court problems can sometimes go unresolved for decades. While courthouse projects appear successful in addressing many courthouse problems, not all localities are equally responsive to court needs. A variety of factors contribute to the limited responsiveness of some localities, including local funding limitations, citizens' interest in preserving historic buildings, and a lack of understanding or support from local citizens and governments. In some cases, courthouse problems are addressed only when the locality is compelled by court order.

Localities are required by the *Code of Virginia* to provide courthouses and suitable facilities for the judges and staff of district and circuit courts and locally-elected constitutional officers including the circuit court clerks (§15.2-1638). This has been a local responsibility from early in Virginia's history.

Citizens benefit from a variety of services performed by local courts, yet the safety and efficiency of judicial proceedings may be undermined by poorly designed or maintained court facilities. In fact, court clerks from around the State report problems with their courthouses which limit their ability to safely and effectively fulfill their duties. While many localities have maintained adequate courthouses, others have failed to do so or have addressed courthouse inadequacies only when ordered to do so by a judge.

### **MOST COURT CLERKS REPORT COURTHOUSE DEFICIENCIES**

While several new courthouses in Virginia offer state-of-the-art facilities, others are outdated and inadequate in a number of ways. These inadequacies range from cramped office space to compromised safety for judges, court staff, and the general public. According to staff at one architectural firm that has designed several courthouses in Virginia, there are a lot of "bad and dangerous courthouses" in the State in need of renovation, expansion, or new construction.

**Survey of Court Clerks**

JLARC staff surveyed chief circuit and chief district court clerks to identify recent and current courthouse projects. Eighty-nine (74 percent) circuit court clerks responded, and 158 (81 percent) district court clerks responded. See Appendix B for further discussion of the survey.

District and circuit court clerks responding to a JLARC staff survey provided information about the adequacy and appropriateness of their courthouses. Clerks were asked to identify their level of agreement with statements about eight key courthouse features: (1) the security of the facility, (2) whether the building provides distinct circulation paths for the public, judges, staff, and defendants, (3) the efficiency of the building, (4) public access to the building, (5) building compliance with requirements of the Americans with Disabilities Act (ADA), (6) records storage capacity of the facility, (7) adequacy of office space, and (8) building maintenance. These eight statements broadly encompass many of the key court features described in the *Virginia Courthouse Facility Guidelines* (hereafter, *Guidelines*). These guidelines were developed in 2001 at the request of the Judicial Council of Virginia to help courts initiate improvements to ensure the safety and efficiency of their buildings.

Based on clerk responses to these eight statements, the majority of court clerks identified a deficiency with their courthouses in at least one key area (Table 16). Overall, 71 percent of district court clerks and 78 percent of circuit court clerks identified a deficiency in at least one area. About a quarter of clerks identified deficiencies in six or more areas.

**Table 16: Most Court Clerks Indicate Courthouse Problems in One or More Key Areas**

Number of Areas with Problems	Circuit Court	District Court
0	22%	29%
1 or 2	18	20
3 to 5	36	25
6 to 8	24	26

Note: Based on responses from 89 circuit court clerks and 158 district court clerks. Clerks were categorized by the number of areas with problems based on whether they disagreed or strongly disagreed with statements about eight key courthouse features.

Source: JLARC staff survey of district and circuit court clerks.

**About Half of Court Clerks Report Security Concerns**

The *Code of Virginia* suggests that adequate court facilities will have security provisions which “safeguard court personnel, participants, and the public” (§15.2-1643). Poor security features compromise the safety of judges, court staff, defendants, and the general public. Inadequate holding cells threaten public safety while a lack of distinct and secure paths between a judge’s parking space, offices, and bench may result in unwanted contact between the judges and defendants’ families and friends, or others involved in a case. Fatal shootings occurring in and around courthouses in sev-

eral states underscore the public’s interest in securing these facilities.

Based on interviews with court clerks and county and city administrative staff, security concerns are often primary factors driving courthouse construction and renovation projects. According to staff from a Virginia architectural firm responsible for numerous court projects, key security issues driving courthouse projects include a lack of separate circulation paths inside the building for defendants, judges, and the public; inadequate holding cells; insufficient space for security checkpoints; and a lack of witness waiting rooms.

**Forty-three percent of circuit court clerks and 52 percent of district court clerks felt their courthouses are not sufficiently secure.**

According to survey respondents, 43 percent of circuit court clerks and 52 percent of district court clerks (of stand-alone facilities) felt their courthouses are not sufficiently secure (Table 17). Commonly, this insufficient security resulted from a lack of separate circulation patterns, as 44 and 46 percent of circuit and district court clerks reported that their buildings do not provide distinct paths for the public, judges, staff, and in-custody defendants. Other security concerns identified by court clerks included inadequate holding cells and a lack of metal detectors.

**Table 17: Percent of Court Clerks Identifying Concerns with Key Courthouse Features**

Concern	Circuit	District <sup>1</sup>
Records storage is inadequate	65%	54%
Office space for staff is inadequate	53	46
Building does not provide separate and distinct paths for the public, judges, staff, and defendants	44	46
Facility is not sufficiently secure	43	52
Building is inefficient for the work they do	39	48
Building maintenance is inadequate	39	43
There is not good public access to the building	30	24
Building does not comply with requirements of the Americans with Disabilities Act (ADA)	20	21

Note: Based on responses from 88 circuit court clerks and 52 district court clerks.

<sup>1</sup>Responses from chief district court clerks in separate district courthouses.

Source: JLARC staff survey of district and circuit court clerks.

Clerks from at least 19 courthouses described security concerns in written survey comments, including these three:

Our Courthouse is not secure in any way. There are no metal detectors. [The] judge has to park in parking lot with defendants and walk into the courthouse, up a flight of stairs, and down a hallway where the public is waiting, although they are accompanied by a bailiff.

\*\*\*

It would be nice if the judges did not have to use the public's front doors to enter the courthouse. We have no metal detectors, the judges park in the same parking area as the public, they use the same doors as the public . . .it is very insecure for them.

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Prisoners are brought in the front door of the building with the general public. The prisoners use the same hallway as the general public going to the holding cells. The clerk's office personnel use the same entrance area to the courtroom as the prisoners who are being escorted to the holding cells.

JLARC staff observed security problems during visits to several courthouses.

### ***Case Studies***

*In one courthouse, inmates, court personnel, and the public utilized the same public elevators, corridors, and lobbies. Inmates were escorted through a public courtyard from the jail to the court facility, through public corridors to their holding cells, and through public corridors to the courtrooms.*

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*Inadequate holding cells in one courthouse were constructed of improper materials and reportedly resulted in defendants punching holes through cell walls and attempting to escape the cell through ceiling tiles.*

### **Court Clerks Report Concerns About Inefficient or Inaccessible Courthouses**

According to statute, the layout of a courthouse should “maximize public access, promote efficient operations, and accommodate the diverse users” (§15.2-1643). According to survey responses, 39 percent of circuit and 48 percent of district court clerks did not feel their buildings were efficient for the work they do. Between 21 and 30 percent of clerks felt their buildings did not provide adequate access for the public and individuals with disabilities (Table 17).

The efficiency of court operations can be undermined by poorly designed facilities and inappropriate arrangements of court functions. Clerks from at least 13 courthouses identified problems with functional arrangements or courthouse accessibility in written survey comments. For example, in one locality three of the juvenile

and domestic relations courtrooms are in one building, while a fourth is in a building across the street. According to the district clerk:

The [separation of courtrooms] causes much confusion on the citizens of the city when trying to obtain where they should be for their hearing. The circuit court clerk's office is located on another street than ours, causing more confusion when attempting to conduct official legal business or court information in the city. The CSU [court services unit] offices are also located in another location on another street. Quite often citizens are sent around the entire downtown area trying to comply with the courts' directives, or trying to find assistance.

Another court clerk explained that the district and circuit courts are spread across three floors in "a 105-year old courthouse and a 1980 addition. The current layout is inefficient at best." Finally, one explained that, due to courthouse layout, individuals at the juvenile and domestic relations court have to go through the general district courtroom in order to access public restrooms. "This is distracting if court is in session."

Survey comments and interviews with clerks of various localities also illustrated ways in which courthouses are often inaccessible to all or a portion of the public, as well as staff with disabilities. For example, old court buildings may not have elevators or bathrooms that can accommodate individuals with disabilities. Jury boxes and witness stands may not accommodate individuals in wheelchairs, and records may be stored in parts of the building (or another building entirely) inaccessible to the general public.

### **Greater Use of Electronic Records May Reduce Demand for Limited Record Storage Space**

The problem most frequently cited by district and circuit court clerks responding to the JLARC staff survey was inadequate records storage (Table 17). In fact, 54 percent of district court clerks in stand-alone courthouses and 65 percent of circuit court clerks disagreed that records storage is adequate, and 46 of district and 53 percent of circuit court clerks disagreed that they had adequate office space.

These concerns were echoed by clerks that spoke with JLARC staff during visits to local courthouses. For example, in Portsmouth, the circuit court clerk showed JLARC staff where court records are stored on shelves in the basement of the building above standing water. In Richmond, space constraints have forced records to be stored in the city's public safety building across the street from the

courthouse, and in Isle of Wight, stacks of boxes line almost every hall in the circuit court clerk’s office.

Records storage is a core role played by court clerks and has important implications for courthouse facilities. As stated in the *Guidelines*,

recording and maintaining land records . . . places the clerks’ offices in the center of local activity and creates substantial space and security demands on their facilities.

Sections 17.1-209 to 213 of the *Code of Virginia* outline the minimum lengths of time records must be stored by circuit court clerks. In certain instances, paper records must be maintained in perpetuity. For example, all files for cases prior to January 1, 1913 must be “permanently maintained in hardcopy form,” although they may be stored at the Library of Virginia (§17.1-213).

While certain hard copies of records must be permanently maintained by circuit courts, other records may be maintained in electronic format. Land deeds, for instance, can be recorded electronically pursuant to *Code of Virginia* §17.1-240. According to staff of the Library of Virginia (LVA), the Supreme Court’s land records management system consistently and effectively backs up digital land records, thereby reducing or eliminating the need for hard copies of those records (with some exceptions).

**Budget Cuts May Have Implications for Circuit Court Record Storage**

Budget cuts in 2010 reduce circuit court clerks’ budgets by about 15 percent. In addition, a greater portion of technology trust funds used by circuit courts to scan historic land records has been diverted to help offset Compensation Board budget reductions for clerk positions. While the implications of budget cuts are apparent for clerk operations, cuts may also impact the ability of clerks to scan or otherwise reduce the amount of paper records.

According to LVA staff, most clerks have utilized the land records management system to the extent possible to make land records available electronically. Circuit court clerks can apply for grants through the LVA to assist in scanning records, when funding is available. These grants are offered to increase public access to land records. Clerks in many localities visited by JLARC staff reported making significant progress in scanning their land records. Nonetheless, LVA staff pointed out that reductions to clerk budgets and technology trust fund (TTF) disbursements make it difficult for clerks to staff and fund this type of project.

Hard copies of certain criminal and civil case files may be destroyed three years after the case ends if the documents “have been microfilmed or converted to an electronic format” (§17.1-213). Electronically scanning certain records, therefore, could provide clerks with an opportunity to reduce the need for physical record storage space.

Nonetheless, certain factors could make this difficult to achieve. First, systems used for this purpose must be effective and reliable in backing up electronic records. According to staff at the LVA, comprehensive systems to manage all case records are just now be-

ing developed. Second, determining when cases end and therefore when hard copies can be destroyed can be difficult. Finally, statutes should provide clear guidance to court clerks about when electronic records can be maintained in lieu of hard copy records. LVA staff pointed to several sections of the *Code of Virginia* which may need to be clarified as courts move toward a paperless system.

### **Many Court Clerks Also Report Concerns About the Comfort, Safety, and Utility of the Courthouse**

According to statute, the adequacy of courthouses also depends in part on the “comfort, safety and obsolescence of the existing facility” (§15.2-1643). About 40 percent of clerks felt maintenance on their buildings was adequate (Table 17). Additionally, clerks identified problems with poorly engineered or functioning systems and health and safety concerns in their courthouses. Specific problems identified by clerks included heating or air conditioning systems which do not work properly, acoustical problems in courtrooms, offices in need of repair, and buildings that cannot accommodate necessary technologies. Other concerns identified included asbestos and mold in the buildings, which in some cases are thought to be causing health problems for employees.

### **LOCALITIES USE A VARIETY OF PROCESSES TO DETERMINE COURTHOUSE CONSTRUCTION NEEDS**

Resolving courthouse concerns is critical to ensuring the effectiveness of court operations and the safety of surrounding communities. Preventing and remediating courthouse problems, in turn, depends on those needs being identified and addressed in a timely fashion. While many courts appear to play a role in local capital planning processes, this involvement does not always take place. As a result, identification of courthouse needs may not occur on a formal or regular basis. Regular involvement of court staff in local capital planning processes and throughout courthouse project planning, however, helps achieve several purposes.

### **Courthouse Construction Is Generally, but Not Always, Part of the Local Capital Planning Process**

Statutes set out a process for localities to develop and implement a six-year capital improvement program (CIP). Section 15.2-2239 of the *Code of Virginia* assigns this duty to local planning commissions, and directs the commissions to consult with the chief administrative officer of the jurisdiction, heads of departments, and “interested citizens and organizations.” The statute does not specify that judges should be consulted, and they may not be considered local department heads since judges are State employees and do

not report to any local official. Still, localities are not required to use the CIP process, and even if using this process, there is substantial variation. For example, in localities visited by JLARC staff, the minimum value for a project's inclusion in the CIP ranged from \$2,500 in Shenandoah County to \$500,000 in Stafford County.

As a result of this sometimes tangential consideration of courthouse construction and maintenance needs in local capital planning, not all localities proactively determine courthouse capital needs. Many localities do not appear to routinely make determinations about maintaining, upgrading, or replacing court facilities. One local administrator even stated that its courthouse project is “really not a part of the CIP.” In other places, the circuit court clerk or chief judge files a yearly capital request to the local administrator as would the head of any other agency.

Although the local CIP process outlined in the *Code of Virginia* is not mandatory for all localities, the statutory omission of judges and court clerks from the process may lead to serious courthouse concerns being overlooked. Inserting a reference to judges and court clerks in the statute may be helpful in bringing these concerns to the attention of local capital planners.

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***Recommendation (2).*** The General Assembly may wish to amend §15.2-2239 of the *Code of Virginia* to specify that, in preparing a capital improvement program, the local planning commission consult with judges and court clerks as well as the chief administrative officer or other executive head of the government of the locality, the heads of departments, and interested citizens and organizations.

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### **Court Personnel Often Consulted During Courthouse Projects, but Opportunities Exist for Greater Participation**

Courthouse projects come to the attention of localities in a variety of ways. Generally, a judge or group of judges will bring problems with the courthouse to the attention of the local government. In some cases, the local administration may act proactively to include the courthouse within the local capital improvement plan, or even as a part of a larger government campus upgrade.

Once issues with a courthouse are acknowledged by local government officials, a space needs assessment appears to be the next step. This usually involves bringing in an architectural firm to look at the facility in terms of security, safety, and usage growth over a period of years. The architectural firm will then suggest options which often include both renovation and new construction plans.

These space needs assessments also appear to be a point of contention as the involvement of the affected parties seems to vary by locality. In some cases, all judges, clerks, sheriffs and other court-based staff are involved from the beginning in a group setting. In other cases, they are contacted individually about the design of their sections. In some cases, however, the building is designed with little or no input from its future tenants.

The Supreme Court's *Guidelines* document suggests that a Facilities Planning Committee should be created, composed of representatives of all interested offices and departments. In addition, the *it* states that the plan should include a projection of future needs, including caseload changes, population and demographic shifts, and the consequent personnel and space needs.

Court judges, clerks, and other staff can play various roles in planning courthouse projects. They may be consulted by the local government about their needs, asked by the architect for input to the design, or involved in a planning committee. As described by several localities that met with JLARC staff, the benefits of involving court staff range from obtaining their buy-in to the project schedule and financial limitations, to designing the most efficient facility to address day-to-day court operations. Hanover County's Director of Facilities Management noted that "having everyone involved from the beginning in the committee process has created acceptance among the group when money has run dry."

Though most localities appear to involve their court staff in courthouse projects in some capacity, there may be greater opportunities for court staff involvement in project planning and implementation.

The majority of court clerks responding to a JLARC staff survey indicated that they had some role in past and current courts projects, and reported being satisfied with their role (Table 18 and Figure 6). For instance, among clerks that reported a current project pertaining to their court, 80 percent of circuit court and 87 district court clerks reported playing some role in the project. The role most often cited by clerks was being consulted by the local government about the project. Clerks that cited other roles often indicated that architects consulted with them or they helped with design ideas. Sixty-four percent of district and 86 percent of circuit court clerks reported being satisfied with their role (or lack of role) in current projects (Figure 6).

**Table 18: Typical Role Clerk Played in Past and Current Projects**

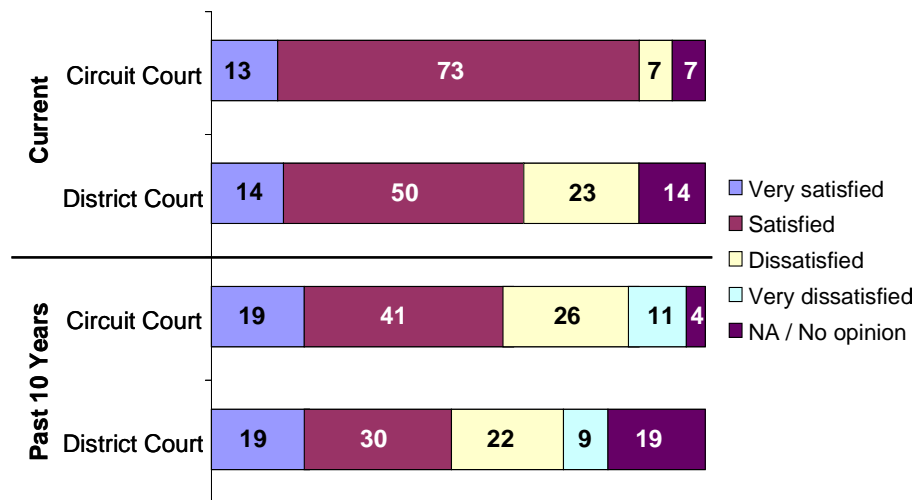
Role of Clerk	Project in Past Ten Years		Current Project	
	Circuit	District	Circuit	District
Consulted by local government	63%	59%	33%	52%
Member of local committee	30	15	27	30
Other	15	10	20	9
No role in process	11	22	20	13
Do not know	4	0	NA	NA

Notes: Based on responses from 15 circuit court clerks with current circuit court projects and 27 with past circuit court projects, and 23 district court clerks with current district court projects and 68 with past district court projects. Columns may total to greater than 100 percent if clerks reported playing more than one role.

Source: JLARC staff survey of district and circuit court clerks.

Although the majority of clerks appear to be involved in courthouse projects and satisfied with their roles, there may be some opportunities for greater participation. For instance, 13 percent of district and 20 percent of circuit court clerks reported having no role in current courthouse projects. Further, 23 percent of district court clerks expressed dissatisfaction with their role, and the portion of both district and circuit clerks expressing dissatisfaction was higher for court projects completed during the past ten years (Figure 6). Thirty-one percent of district court clerks and 37

**Figure 6: Majority of Court Clerks Satisfied With Their Role in Current Courthouse Projects, but Fewer Satisfied Over Past Ten Years**



Note: Analysis based on responses from 15 circuit court clerks with current circuit court projects and 27 with past circuit court projects, and 22 district court clerks with current district court projects and 67 with past district court projects.

Source: JLARC staff survey of district and circuit court clerks.

percent of circuit court clerks expressed dissatisfaction with the role they played in past projects. Because these levels of dissatisfaction are greater, in some cases, than the percentage of clerks with no role in the courts projects, there appear to be clerks involved in some capacity that are still dissatisfied with their roles.

**LOCAL RESPONSIVENESS TO COURTHOUSE NEEDS VARIES**

While courthouse projects successfully address many courthouse problems, not all localities are equally responsive to court needs. In addition to an often tangential relationship between court projects and the local capital planning process, a variety of factors appear to contribute to the limited responsiveness of some localities in addressing courthouse problems.

Some localities have undertaken projects in recent years to improve the efficiency or safety of their courthouses. In a five-year period beginning in 2005, 26 out of 126 localities (21 percent) reported courthouse projects with estimated costs of greater than \$500,000 each (Table 19). In addition to completed projects, clerks from several localities report that projects are underway to improve their courthouses.

**Table 19: Localities with Recent and Planned Courthouse Projects Greater than \$500,000**

<b>Timeframe</b>	<b>Localities with Projects</b>
2005 to 2009	26 <sup>1</sup>
Underway or planning stages	24 <sup>2</sup>
Expected in next two to five years	10
<b>Total</b>	<b>60</b>

<sup>1</sup>Includes two projects slated for completion in 2009.

<sup>2</sup>Cost estimates unknown for nine projects.

Source: JLARC staff survey of district and circuit court clerks, news articles, and interviews with court clerks and city/county administrators.

Overall, clerks from 24 localities (19 percent) provided information about projects of varying magnitudes that are underway or in the planning stages (which will be completed sometime after 2009). Court clerks in an additional ten localities (eight percent) reported that they expect renovation, expansion, or construction of one of their court facilities in the next two to five years.

Eighteen of the 26 recently completed projects represented construction projects, meaning the locality built a new courthouse or in some way expanded the physical space of the courthouse. The other eight projects were substantial renovations or improvements to existing courthouses. In addition to major courthouse projects,

localities have undertaken numerous smaller projects, such as creating an additional courtroom from existing space, renovating office space, replacing elevators, increasing courtroom seating, and other improvements such as painting or carpeting. Nine of the 26 projects completed or slated for completion in 2009 are described in Table 20.

**Table 20: Courthouse Projects Completed in 2009**

Locality	Project Description
Fairfax <sup>1</sup>	Renovation and expansion of courthouse including new courtrooms. Juvenile and Domestic Relations (JDR) court and court services units moving into building
Bristol	JDR courtroom and offices completely renovated, new general district courtroom, circuit court jury room, judge's chambers, and office space, and improved security
Rockbridge	New courthouse constructed which houses circuit and district courts
Stafford	Additional courtroom and limited storage as temporary fix
Surry	Renovated two courtrooms and constructed a new JDR courtroom
Charlottesville	Built new JDR court building including courts services unit
Fredericksburg	Renovated circuit court building and clerk's office for mold remediation
Henrico <sup>2</sup>	Expansion and renovation of the Juvenile Courts building including two new courtrooms, public area and judge's chambers
New Kent <sup>2</sup>	Renovation to add JDR courtroom, clerk's office, records storage, and secure office for judge. Added meeting rooms and offices for Commonwealth's Attorney, holding cells with secure elevators to the second floor, and offices for some sheriff's employees.

<sup>1</sup>Fairfax Circuit Court (serving the county and city), and Fairfax County District and Juvenile and Domestic Relations courts.

<sup>2</sup>Slated for completion in 2009

Source: JLARC staff survey of district and circuit court clerks, news articles, and interviews with court clerks and city/county administrators.

**Projects Have Addressed Some Courthouse Deficiencies**

Survey results suggest that courthouse projects undertaken by localities have helped to address shortcomings in their courthouses. For instance, circuit court clerks who reported a circuit courthouse project in their locality in the past ten years were much more likely to agree that their facilities were adequate (Table 21). Clerks reporting a project in the past ten years were 30 percent more likely to agree their building provides distinct circulation paths, and 19 percent more likely to agree their facility is sufficiently secure.

**Table 21: Clerks in Localities With Recent Courthouse Projects More Likely to Agree That Courthouse Adequate**

	Percent Agreement	
	Project	No Project
Building complies with Americans with Disabilities Act (ADA)	85%	66%
There is good public access to the building	74	69
Building is efficient for the work they do	74	52
The building provides distinct paths for the public, judges, staff, and in-custody defendants	74	44
The facility is adequately maintained	70	53
The facility is sufficiently secure	70	51
There is adequate office space for the staff who work there	59	39
Records storage is adequate	48	23

Note: Responses from 27 circuit court clerks who reported a circuit courthouse project in their locality in the past ten years, and 61 who did not.

Source: JLARC staff survey of district and circuit court clerks.

Although recent projects appear to improve the adequacy of courthouses, some problems persist. For instance, less than half of clerks in localities with recent projects feel their records storage capacity is sufficient. In some cases, problems with design may not be evident until after construction. One clerk explained, “Whereas the building [completed in 2001] is beautiful, as with most new construction, you don’t know how well the design will be until used [*sic*].” In other cases, the project may have addressed only some court concerns. One circuit court clerk stated that “even though our courthouse facility has been fully renovated and meets the guidelines for ADA, the public still often faces inadequate/inaccessible parking.” Another indicated,

[The county] has just spent over \$100 million to expand the current courthouse. . . However, even with the doubling of the size of the courthouse, space is still at a premium.

**While Most Localities Are at Least Somewhat Responsive, Some Courthouse Problems Persist**

While all of the problems identified by court clerks have the potential to reduce the efficiency or safety of court operations, not all localities are responsive to courthouse needs. When asked about the responsiveness of their localities to court facility needs over the past ten years, most clerks felt their localities had been at least somewhat responsive, though only a minority felt their locality had been fully or mostly responsive (Table 22). Between 11 and 13 percent of circuit and district court clerks described their localities as not at all responsive.

**Table 22: Responsiveness of Locality to Construction, Renovation, or Expansion Needs of Court Facilities Over Past Ten Years**

Responsiveness	Percent of Court Clerks	
	Circuit	District
Fully or mostly responsive	39%	32%
Somewhat responsive	40	36
Not at all responsive	11	13
No opinion/ not applicable	10	18

Note: Based on responses from 87 circuit court clerks and 157 district court clerks.

Source: JLARC staff survey of district and circuit court clerks.

*Among court clerks reporting six or more courthouse deficiencies, less than half indicated that projects are underway to address their courthouse.*

Furthermore, the majority of clerks citing a courthouse problem in at least one key area do not expect their localities to undertake projects to address shortcomings. Overall, more than two-thirds of clerks identifying concerns are unaware of any current or future courthouse projects to correct those issues. Among court clerks reporting courthouse deficiencies in six or more areas, less than half indicated that projects are underway or planned to address courthouse concerns (Table 23). In several localities, there appear to be discussions about addressing at least some courthouse problems in the future, but details or timeframes are unknown.

Several clerks responding to the survey expressed frustration about the lack of responsiveness of the local government or the amount of time it has taken for them to respond. One explained that “a security assessment has been completed with results reflecting major issues with security, both interior and exterior of our historic courthouse.” Nonetheless, the clerk stated, “Financial circumstances with the economy and a small locality are a major hindrance when it comes to change.”

**Table 23: Portion of Clerks With No Projects Underway or Planned for Next Two to Five Years, by Range of Courthouse Deficiencies**

Number of Areas with Deficiencies	Percent of Clerks	
	Circuit Court	District Court
Two or less	89%	90%
Three to five	69	72
Six or more	57	61

Note: Based on responses from 89 circuit court clerks and 158 district court clerks. Analysis based on whether clerk reported a current project pertaining to their courthouse, or a planned project pertaining to any courthouse in the locality. Responses may be duplicated if more than one district court clerk responded for a courthouse.

Source: JLARC staff survey of district and circuit court clerks.

Another clerk explained that the courthouse has been at the top of the locality's capital improvement program list since 1999. Since then, a study was commissioned to address security and space issues, and numerous letters have been written regarding these matters, but no project is underway. Still another clerk explained, "I have a 2007 report from a consultant on facility-security that indicates that it only is a matter of time until something awful happens here."

Concerns about the responsiveness of localities in addressing court needs were echoed by some clerks that spoke with JLARC staff during courthouse visits. It was not uncommon to hear about ten or more years passing between the first identification of the need to improve court facilities and the completion of a court project.

### **Courthouse Projects May Be Delayed Due to a Lack of Local Support**

Several reasons appear to account for uneven local support for courthouse projects. Courthouse projects typically compete for resources with a variety of other capital projects, including jails, schools, redevelopment projects, and other government buildings. These other projects were often reported to take priority over courthouse projects. While school maintenance needs may be broadly recognized and supported within a community, the need to maintain adequate court facilities may be less understood. This idea was often asserted by local government and court staff who spoke with JLARC staff. As one court clerk explained:

Our city in the past had a project to build a new ... courthouse building, they had the architects design a building, even down to picking out a carpet. Then it was put on the back burner as other projects were funded.

In addition, the size of a city or county's tax base could influence the ability of the locality to pursue courthouse projects, which are funded primarily through local property taxes. In two cities visited by JLARC staff, this factor may have played a role in delaying courthouse construction projects. The City Administrator in Portsmouth indicated that only half of the city's real estate is taxable. Likewise, in Lexington, the City Attorney told JLARC staff that two-thirds of the property in the city is tax exempt.

In other cases, citizens' concerns about the historic value of old courthouses have influenced the speed or design of a project. As stated by the Supreme Court's *Guidelines*

As one of the original thirteen colonies, Virginia has a long court tradition which manifests itself in a substantial number

of historic landmark courthouses that are still in use and should be preserved where possible.

As noted in Chapter 1, the Virginia Landmarks Registry lists 63 courthouses or courthouse districts, most of which are also on the National Register of Historic Places. JLARC staff identified several local projects that were delayed, had increased costs, or were otherwise influenced by local concerns about the importance of preserving a historic courthouse or building a new courthouse consistent in design with existing architecture within the community. For instance, in Surry County, a lawsuit was filed by a citizens' group that opposed renovation designs because they felt the plans would not preserve the historic nature of the courthouse. This was reported to affect the final design and cost of the courthouse project.

In some cases, projects have been delayed by the local Board of Supervisors, and in other cases citizens themselves have directly delayed the process of courthouse construction. If a county plans to construct a courthouse at a new location which is not adjacent to the existing courthouse, *Code of Virginia* §§15.2-1645 and 1646 requires citizen approval through a referendum. In Rockbridge county a referendum to move the courthouse to a non-contiguous site failed, even though the new site was within a block of the existing courthouse. The county had to purchase an additional parcel of land connecting the new and old courthouse locations before it could proceed with construction.

### **CIRCUIT COURT JUDGES CAN ORDER A LOCALITY TO IMPROVE COURT FACILITIES**

#### **Writ of Mandamus**

A *writ of mandamus* is an order issued by a superior court to a public official or body or lower court to perform an act required by law. In this case, a *mandamus* can be issued to compel a local government to renovate or construct court facilities if they are not secure or are out of repair.

While courts are not always directly involved with the local capital planning process, if a locality is not responsive to courthouse needs, §15.2-1643 of the *Code of Virginia* provides a process outside of the local capital process by which court construction or renovation can be ordered. This statute provides that if a locality's court facilities are found to lack adequate security, need significant repairs, "or otherwise pose a danger to the health, welfare and safety of court employees or the public," the circuit court judge of a locality can order local officials to show cause why a *writ of mandamus* should not be issued to cause the necessary work to be done to bring the facility into compliance. The intent seems to be that local officials can avoid the *mandamus* by going ahead with the repairs or construction.

Table 24 lists show cause cases initiated in the past 20 years. Among the 26 projects completed between 2005 and 2009, four (15 percent) were completed after a judge filed suit. The statutory

**Table 24: Judges Have Utilized the Show Cause/Mandamus Process**

Locality	Year of Show Cause Order	Final Action	Number of Years Elapsed
Hopewell City	1989	1991 Consent Order	2
Henry County	1992	1997 Final Order	5
Williamsburg/James City County	1994	2000 Final Order	6
Brunswick County	1995	Final Order (no date)	??
Warren County	1998	2002 Final Order	4
Middlesex County	1991, 1999	2002 Consent Order	3
Appomattox County	2000	2006 Final Order	6
Richmond City	2001	2007 Consent Order	6
Rockbridge County	2002	2009 Final Order	7
Surry County	2004	2005 Decree	1
Portsmouth City	2008	Not yet concluded	-
Smyth County	2005	Not yet concluded	-
Shenandoah County	2007	Not yet concluded	-

Source: Attorney General documents and JLARC staff interviews with local officials.

process that allows for *writs of mandamus* on court facility construction should probably be seen as a fall-back or “worst case” procedure. Ideally, courthouse renovation or replacement should be managed by local governments as a routine part of local planning for capital improvements. The need for judges to order court facility construction, then, would seem to reflect a breakdown in what should be a fairly orderly local planning process. Some localities have apparently allowed their court facilities to fall into disrepair and/or have been unable or unwilling to invest in facility improvements to accommodate changes in staffing, security, office arrangements, technology, and records storage.

It should be noted that district courts are not included in this statute (*Code* §15.2-1643), and instead must persuade the circuit court to file an order on their behalf when facilities are inadequate. In many cases, this may be sufficient, where district and circuit courts are in the same facility and face the same concerns. However, in at least one locality, the clerk of a district court that is located in a building separate from the circuit court expressed concern about the lack of involvement of the circuit court judge in addressing their needs.

***Case Study***

*A clerk explained that the district court judge and clerk have attempted for “15 years to try to get a new building.” The clerk noted numerous concerns including security, mold, and problems with the air conditioning system. However, “the circuit court judges have not offered any assistance in obtaining a new courthouse, or at least renovating and expanding the old one, which is greatly needed.”*

***Courthouse Mandamus Process Has Evolved.*** A process by which the court can order a locality to build a courthouse has been in Virginia statute since at least the early 1900s. Prior to 1975, statutes provided that the circuit court could enter a show cause and subsequent *mandamus* order based on that court’s judgment of whether the courthouse was “insecure or out of repair.” This process raised issues of fairness as the same circuit court judge who brought the show cause order would likely hear and rule on the case. As a result, in 1975, legislation amended the process so that the Chief Justice of the Supreme Court would appoint a circuit court judge from a remote jurisdiction to

hear and determine whether the court facilities are in fact in a state of disrepair and the extent to which repairs, if any, are necessary. (*Code* §15.2-1643)

This continues today as the Chief Justice of the Virginia Supreme Court is notified when a show cause order is entered under §15.2-1643 of the *Code of Virginia*, and is required to assign a reviewing judge from outside the affected circuit to determine whether the order is justified.

The locality and circuit court judge typically hire legal advocates as well as experts to support their case. Judges are provided with legal counsel in these cases through the Attorney General’s office. Staff from the Office of the Attorney General indicated that for at least 20 years, their office has hired private counsel to represent judges in these cases. Judges’ counsel brings evidence that the facility is “insecure, out of repair, or otherwise pose[s] and danger to the health welfare and safety of court employees or the public.” The locality must then present evidence that they have made good faith efforts to rectify the issue. In many cases, as shown in Table 24, a settlement leading to a consent order is made at this stage, without the need for a *mandamus* order.

### **Statute Requires Review Panel for *Mandamus* Order to be Issued**

If the reviewing judge finds the court facilities to be safe or adequate, he or she is required to vacate the order. Otherwise, the originating circuit court is required to issue a *writ of mandamus* compelling the locality to take corrective actions. However, the statute (*Code* §15.2-1643) states that before the *mandamus* can be issued, the locality must appoint a five-member panel of experts to review the facilities in question and make recommendations to the locality and to the reviewing judge. This requirement was added to the statutory process in 1979. The reviewing judge must consider the findings and recommendations of the local panel in determining whether the facilities in question are in need of repair or reno-

vation. In addition, the reviewing judge can not order a replacement or additional facility to be built unless the panel deems that necessary.

The 1979 revision also included factors for the panel to consider in its review:

- security provisions to safeguard court personnel, participants and the public;
- efficient layout and circulation patterns to maximize public access, promote efficient operations, and accommodate the diverse users;
- provision of administrative and service areas, judges' chambers, hearing rooms, conference rooms, prison holding areas, and public information areas; and
- comfort, safety and obsolescence of the existing facility or any part thereof. (§15.2-1643)

In 2002, this process was again amended, requiring the five member panel to be convened at the locality's request or

If the pleadings allege that the court facilities are in fact insecure or out of repair, or otherwise pose a danger to the health, welfare and safety of court employees or the public.

Since virtually all pleadings by definition will allege this, this five-member panel would be required in all cases brought under §15.2-1643 before the reviewing judge can issue a *mandamus*. Despite this, JLARC staff could identify only two cases since 2002 which have used these panels. It appears that many cases are settled without a *mandamus* order, which may explain why the panel is not convened in every case. Finally, if a locality wishes to challenge the reviewing judge's order, the *writ* can be appealed to the Supreme Court of Virginia.

### **Supreme Court *Guidelines* Used During Show Cause Cases**

Even where the panel is not convened, the elements outlined in §15.2-1643 create the framework around which reviewing judges determine whether court facilities are "insecure or out-of-repair." In addition, judges and judicial counsel also appear to utilize the Supreme Court's *Guidelines* as the basis for determining compliance.

It is worth noting that this is not the expressed purpose of the *Guidelines* which the Supreme Court produced in 2001 as "guidelines, not standards," acknowledging that

Because the size, caseload, and location of Virginia's courts vary widely as do the economic resources of the communities they serve, the guidelines focus on elements required in a court facility while allowing flexibility in how those elements are incorporated.

The *Guidelines* document was written by an individual outside of the Supreme Court, and appears to have had no public input before they were published.

Despite this, some show cause pleadings reviewed by JLARC staff cite noncompliance with the *Guidelines* as a demonstration of inadequacies in their facilities as well as with locally proposed solutions. In at least one case, the reviewing judge cited compliance with the *Guidelines* as a necessary element in any courthouse proposal by the locality. An architect familiar with many court projects in the state indicated that in his experience, once a case goes to litigation, localities have little discretion and must complete a project that complies fully with the *Guidelines*.

In addition, a new certification process required to collect a \$3 courthouse construction fee utilizes the *Guidelines* to determine whether a courthouse is in compliance. This certification process is discussed further in Chapter 5.

In the view of localities, therefore, the *Guidelines* has been adopted by the Supreme Court and endorsed by the General Assembly through its inclusion in the statute that authorizes the construction fee. While the *Guidelines* appear to be reasonable and provide room for variance, they were not designed with the current use in mind and should be revisited to address potential concerns.

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**Recommendation (3).** The Supreme Court may wish to clarify the purpose and intended use of the *Virginia Courthouse Facility Guidelines*. If the document is intended to be used as building and evaluation standards for local courts, the guidelines should be periodically revised with input from the public and other relevant stakeholders to enhance public acceptance and ensure that they represent reasonable standards.

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### **Show Cause Process Seems Necessary Even If It Does Not Result in *Writs of Mandamus***

JLARC staff were unable to identify any cases in which an actual *writ of mandamus* had been issued in a case brought under *Code of Virginia* §15.2-1643. Instead, the prospect of a *mandamus* order is a substantial incentive to localities and appears to drive the locality to come to an agreement with the courts. Most circuit court

clerks as well as local administrators interviewed by JLARC staff agreed that the statutory process is necessary, if only as a deterrent to long-term “foot dragging” by local boards when they are reluctant to build.

In some cases, the show cause order was the catalyst for the locality actually beginning the process of planning and building a facility. Locally elected officials, concerned that they may lose additional control of the project through the issuance of a *mandamus*, often worked with the circuit court judges and their counsel to agree on a solution. In these situations, the reviewing judge enters a consent order, signed by both parties, that outlines the agreement between the circuit court judge and the locality on a suitable building solution. The reviewing judge then monitors what the locality is doing to ensure that the project is moving forward in a timely fashion towards the specifications outlined in the agreement. Often the reviewing judge retains the services of an architectural firm to assist with monitoring the project. In cases initiated in the past 20 years, an average of more than four years passed between issuance of the initial show cause order and the final action (Table 24).

Even in localities that were not under court order, local administrators indicated to JLARC staff that they had made their councils and boards aware of the possibility of this process. In some cases, judges made local officials aware of this process when requesting the new building. One county administrator stated,

The county was very concerned with being under court order. If an order were to be approved, the locality would cede control of the project to judges, a situation that the county feels would greatly increase the cost and scope of the court project.

Judges appear to use this process only after the locality fails to address their concerns, and the process is not seen by the judges as the only or primary way to have input to the local capital plan. Judges generally bring these issues to the locality and give localities considerable time for action. Local administrators generally agreed that judges were patient with the local process and in many cases, a decade or longer passed between the judge initially voicing concerns to the locality and finally resorting to the *mandamus* process. This commonly results from lack of action by the locality, such as multiple studies of court needs without any subsequent plan for construction.

**Most Localities Unaffected by Appropriation Act Moratorium on Court-mandated Courthouse Improvements**

The 2009 General Assembly placed language in the Appropriation Act (Item 40F) delaying through June 30, 2010—if the local governing body requests—all changes or improvements to court facilities mandated under Section 15.2-1643 of the *Code of Virginia*. In discussions with JLARC staff in 19 localities, localities seemed generally unaffected by this moratorium and had worked with judges to ensure they understood the financial hardships faced by the locality and potential construction delays resulting. Because most localities were not under order at the time, the language has little impact.

# Chapter 5

## Funding of Courthouse Construction and Renovation

### In Summary

Localities are required by statute to provide court facilities, and maintaining those facilities can be costly. Total costs for local courthouse projects completed since 2005 or currently underway exceed \$720 million. The costs of court projects range substantially and are driven by a variety of factors, such as local citizens' interests, the scope of construction or renovation, and even the *mandamus* process. Localities usually funded them from general revenue, resulting in an impact on local property taxes of between one and nine cents. Beginning in 2009, localities can assess a \$3 fee on court cases to raise revenue for courthouse renovation and construction. However, potential revenue generated by this fee is estimated to account for only a small portion of local construction costs, and there appear to be several unnecessary restrictions to levying this fee which could reduce its effectiveness. Nonetheless, many clerks indicated in a survey that their locality may levy the fee because of the need to pursue any available revenue source.

Many Virginia courthouses have deficiencies that can only be addressed through renovation or construction projects. While courts play an important role in public safety, the maintenance and construction of court facilities also have significant financial implications for localities. As described in Chapter 3, local courthouse revenue often falls short of covering court operating costs. In addition, Virginia law requires localities to provide and maintain courthouse facilities, but revenue from the two fees designated for courthouse construction falls far short of estimated costs.

Consequently, localities are not always eager to undertake courthouse projects, and sometimes localities choose to minimize costs instead of fully remedying problems. One court clerk noted, "With the shortage of money ... in our city, whenever there is a project, it is bare bones, [with] no consideration for future expansion." Another explained, "Due to cost overruns ... there were insufficient funds to complete phase two of the project as designed. Funding concerns always took precedence over all else."

There is currently no statewide data on local courthouse construction and renovation projects and their costs. As a result, information on current projects and their costs was gathered through structured interviews and a survey of court clerks.

## **COURTHOUSE CONSTRUCTION AND RENOVATION IS COSTLY**

According to architects and others involved with courthouse projects, while each building has unique issues, there are some general “rules of thumb” for courthouse construction cost. According to an architect involved in many courthouse construction projects in Virginia, in 2008, the average cost was about \$300 per square foot for new construction, excluding costs such as site preparation, furniture, and architect’s fees. This also does not include the cost of purchasing the land, in cases where that is necessary. Costs for renovation appear to be about half the cost of construction, not including any costs for providing temporary housing for the courts during renovation.

Because the cost to renovate may be lower than construction, many localities consider renovation as an initial option. Courts must stay in session during renovation, however, so localities must either provide suitable temporary facilities or schedule construction at times when court is not in session. When Richmond renovated the Manchester Courthouse, for example, a temporary facility was provided that cost an estimated \$1.2 million, but enabled an overall solution which was at least \$20 million less than a new construction plan that had been considered. In another case, Surry County arranged to hold court in Sussex County during its courthouse renovation and paid jurors additional mileage when necessary. New Kent County was able to add a courtroom as well as some office and meeting space by working the renovation schedule around times when court was in session. While these local situations are individually unique, they illustrate creative ways in which courthouse renovation was made feasible.

In the current economic environment, costs for construction have declined and now appear to be between \$200 and \$250 per square foot. In speaking with localities that are currently building or requesting bids for courthouse construction, projects are costing less than originally budgeted. For example, based on a preliminary project estimate, Spotsylvania borrowed \$28 million for a new circuit court building in a 2005 bond referendum, but the project cost less than \$18 million when bids were received in 2008. In Nelson County, construction of a new district court building was expected to cost about \$10 million, but a bid was accepted in 2009 to build for \$6.7 million. In Lancaster County, \$7 million in funding was secured for construction of a new judicial center based on their architect’s estimate, but a bid for \$3.9 million was accepted in 2009.

### **Security Concerns Contribute to Courthouse Construction Costs**

Courthouse construction costs appear to be, on a per square foot basis, 30 to 40 percent higher than standard commercial building

costs. Courthouses do have particular issues that could add costs over standard types of construction. These issues include the need to balance the public’s right to access the court building with concerns about the security of judges, court staff, juries, criminal defendants, and the public. As the *Virginia Courthouse Facility Guidelines* state:

There are few traditions in our nation as cherished as that of free-and-open access to our judicial system. The expectation and reality of judicial security, both inside and outside the courtroom and courthouse, is integral to fulfilling our justice system’s promise of access, impartiality, and the right to a fair trial.

As a result of these concerns with security, courthouses require additional elements generally not needed in other buildings. Separate circulation patterns for the general public, judges and court staff, and prisoners help to keep each of these groups safe and secure, but can add costs. Courthouses may also feature other elements, such as a sally port for secure prisoner transfer from the jail, or secure, monitored parking for judges and jurors, which strengthen security but can increase costs.

**Recent Courthouse Projects in 26 Localities Cost More Than \$270 Million**

Between 2005 and 2009, major courthouse projects undertaken by 26 localities cost an estimated \$273 million (Table 25). A single project in Fairfax cost the locality about \$120 million. In addition, clerks responding to the JLARC staff survey from localities with projects or plans underway expect spending to exceed \$450 million.

While the figures provide a picture of the financial impact of courthouse projects, actual costs could be higher, particularly for past projects, for which some costs may not have been identified, and future projects, which do not have cost estimates at this time.

**Table 25: Estimated Costs of Planned and Completed Courthouse Projects Since 2005**

Timeframe	Number of Projects <sup>1</sup>	Estimated Costs (millions)
2005 to 2009	26	\$273
Future projects	17 <sup>2</sup>	453
<b>Total</b>	<b>43</b>	<b>726</b>

<sup>1</sup>Projects with costs or estimated costs over \$500,000.

<sup>2</sup>Cost estimates unknown or unavailable for nine other projects. Twenty-four localities reported 26 projects that will be completed after 2009.

Source: JLARC staff analysis of survey responses from district and circuit court clerks, news articles, and interviews with city/county administrators.

**Courthouse Projects Impact Local Revenue and Taxes**

Perhaps a more meaningful way to understand the impact of these project costs on localities is to consider their effect on local property taxes. These projects are funded through local revenues. Consequently, when a locality finances a multi-million dollar project, the impact may increase local property taxes. In other cases, taxes may not increase, but the project may be funded in lieu of other local expenditures or capital projects.

Local administrative officials generally indicated in interviews with JLARC staff that debt service on their current or planned courthouse projects would have an equivalent impact of one to four cents on their local property tax rate (Table 26). Fredericksburg staff, however, indicated that their courthouse debt service had an estimated impact of almost ten cents on their rate. This was a more comprehensive courthouse plan than most, but it highlights the potential for greater relative costs in some localities.

**Table 26: Courthouse Construction Projects Impact Property Taxes**

Locality	Estimated Annual Debt Service	Estimated Property Tax Rate Impact
Fredericksburg	\$3,000,000	0.09
Surry County	800,000	0.03-0.04
Nelson County	645,000	0.03
Middlesex County	502,000	0.02
Stafford County	3,000,000	0.02
Lancaster County	480,000	0.01

Note: Localities finance projects using different rates and borrowing terms.

Source: JLARC interviews with local staff.

Beyond tax revenue, local governments have few sources of funding for courthouse projects. As described in Chapter 3, local governments can use revenue from a \$2 courthouse maintenance fee to offset court maintenance and construction costs, although this revenue is reportedly inadequate to cover maintenance and operating costs. In describing local funding for their courthouse project, one city manager explained,

Tax revenues will bear most of this burden. The City also collects courthouse construction fees through a charge on all criminal and civil cases filed in the courts, but the revenue from these fees is not adequate to pay for the new facility.

In an effort to allow localities to generate additional revenue for courthouse projects, the General Assembly recently adopted a new courthouse construction fee designated for this purpose.

**NEW COURTHOUSE CONSTRUCTION FEE PROVIDES POTENTIAL FOR LIMITED ADDITIONAL FUNDS, BUT HAS UNNECESSARY RESTRICTIONS**

The 2009 General Assembly provided a process for localities to assess and collect additional fees for courthouse construction, renovation, and maintenance. Localities were already authorized to assess a \$2 fee on all civil, criminal, and traffic cases for the purposes of

construction, renovation, or maintenance of courthouse or jail and court-related facilities and to defray increases in the cost of heating, cooling, electricity, and ordinary maintenance. (*Code of Virginia* §17.1-281B)

Interviews with circuit court clerks and local administrators indicate that this \$2 fee is generally viewed by localities as a courthouse maintenance fee, rather than a construction fee, and is commonly placed in the locality's general fund to offset facility maintenance. Local officials universally reported that expenditures on maintenance far exceeded revenues from the \$2 fee.

The 2009 General Assembly adopted SB 1387 and HB 2311, which amended §17.1-281 of the *Code of Virginia* to authorize localities to add a \$3-per-case fee to the already-authorized \$2-per-case fee, all dedicated to courthouse renovation and construction. Under the new legislation, localities are authorized to assess an additional \$3 for all cases except civil actions of less than \$500, "solely for the construction, reconstruction, renovation of, or adaptive re-use of a structure for a courthouse."

These fees, however, can only be imposed if the Department of General Services (DGS) certifies the courthouse as non-compliant with the safety and security guidelines contained in the *Virginia Courthouse Facility Guidelines*. In order to do so, a locality must submit a self-evaluation of their court facility to DGS, indicating how their facility is non-compliant. A DGS building inspector then conducts an inspection of the facility to confirm that it is out of compliance. DGS reviews the case and issues a certification of non-compliance, which then authorizes the locality to adopt an ordinance imposing the fee. The locality must reimburse DGS for the site visit and other related costs, which have generally been in the range of \$1,100 to \$1,400 in localities that have been certified.

### Certification Process Is Problematic

JLARC staff identified several concerns with the certification process. First, this process creates an incentive to allow court facilities to fall into disrepair in order to qualify for the fee. Localities that conduct adequate and timely maintenance and renovation may never be eligible to collect the fee. This appears contrary to the purpose of the fee, since, once certified, the fee can continue to be imposed after safety and security issues have been corrected. Several localities that had recently upgraded or built new court facilities indicated they would not seek to impose the fee because they likely would not qualify.

Second, the process also requires the locality to assert that their facility is out of compliance with safety and security guidelines, which may discourage some localities from seeking the fee even in cases where they might be eligible. Local administrators indicated that such a certification could send a bad message to the citizens that their courthouse was unsafe. Also, with lawsuits playing a large role in courthouse construction, localities may be concerned with this certification weakening their standing in *mandamus* cases.

The law states that a locality can impose the fee only if the facility “cannot be feasibly renovated to correct such non-compliance,” yet the statute stipulates that funds can be used for renovation. This provision seems counterintuitive and inconsistent with the goal of raising funds to offset the cost of ensuring an adequate court facility.

The statute also requires DGS to utilize the *Virginia Courthouse Facility Guidelines* as standards for building inspections, despite the fact that the document itself clearly states that they are meant only as guidelines, departures from which should be expected. These guidelines have not been revised since their publication in 2001 and have never been exposed to public comment or any form of regulatory process. Finally, it appears that the dollar amounts collected by the fee can only be an effective revenue source if collected over a period of time.

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**Recommendation (4).** The General Assembly may wish to amend §17.1-281 of the *Code of Virginia* to eliminate the role of the Department of General Services in certifying courthouses as out of compliance with the Supreme Court’s *Virginia Courthouse Facility Guidelines*. The amended language should authorize all localities to adopt an ordinance implementing a \$3 per case fee for courthouse construction and maintenance. This \$3 fee could also be combined with the \$2 courthouse maintenance fee, which is already authorized to be spent on courthouse construction or renovation.

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### **Many Localities Seek to Impose the \$3 Courthouse Construction Fee**

Despite some expressed concerns about pursuing the courthouse construction fee, many localities still view this fee as a necessary, though minor, source of revenue to supplement local general funds for courthouse projects. When asked in a JLARC staff survey whether they expected their locality to pursue collecting the additional \$3 fee, at least one district or circuit clerk in 54 out of 124 localities (44 percent) indicated that they do. Because courthouses must be certified as having safety and security problems before localities can assess this fee, this finding suggests that there are a large number of courthouses that may be deficient. In addition, many of these localities will look to any available revenue source to fund future projects. One court clerk noted that

“the present economic climate will serve only to exacerbate [court] problems. I feel the county will welcome and embrace any means to collect revenue.”

Localities understand the concerns about access to the justice system that surround any new court fees, as the fees generally affect their constituency most directly. Some localities visited by JLARC staff did not impose the full \$2 maintenance fee on all cases, and some localities exempted certain types of cases entirely. Even in localities that sought to impose the \$3 construction fee, local officials indicated that concerns about access were considered.

According to DGS, 15 localities have inquired about imposing the \$3 fee. Of those localities, seven have been reviewed and were certified as non-compliant. Three other localities are awaiting inspection, while two localities are still completing their submission to DGS. An additional four localities have requested a cost estimate for the DGS service, but have not submitted an application.

### **Courthouse Fee, If Imposed, Would Provide Inadequate Funding For Courthouse Construction or Renovation**

If all localities imposed the \$3 courthouse construction fee on cases for which the \$2 courthouse maintenance fee is imposed, this fee could raise a maximum of about \$5.5 million per year statewide, according to JLARC staff estimates. Ignoring debt financing costs, this revenue could fund a total of perhaps \$110 million in courthouse construction projects over the next 20 years. As noted before, JLARC staff identified at least \$274 million in major projects in just 26 localities over the past five years and in addition, \$453 million in projects that are currently planned or underway.

Table 27 compares current project costs in selected localities with potential courthouse fee revenues over 20 years. These revenues, while not inconsequential, are inadequate to fund the current construction projects in these localities.

**Table 27: Courthouse Construction Fee Provides Inadequate Revenue for Courthouse Construction**

Locality	Estimated Total Project Costs (\$ millions)	Total Estimated 20-year Revenues	Estimated Collections as Percent of Project Cost
Appomattox County	\$5.0	\$194,290	4%
Colonial Heights <sup>1</sup>	6.0	561,941	9
Fredericksburg	33.0	372,379	1
Hanover County <sup>1</sup>	47.0	1,508,456	3
Isle of Wight County	12.0	575,918	5
Lancaster County	3.9	113,297	3
Middlesex County	7.7	147,467	2
Montgomery County	26.5	1,647,089	6
Nelson County	6.7	208,194	3
New Kent County	1.6	453,708	28
Norfolk	135.0	1,984,632	1
Richmond	30.0	8,588,673	29
Rockbridge County/ Lexington City	23.0	804,205	3
Shenandoah County	14.5	926,829	6
Spotsylvania County	17.3	1,169,863	7
Stafford County	28.9	1,085,225	4
Surry County	15.0	94,860	1

<sup>1</sup>Not included in cost estimates in Table 26 because cost estimates were prepared but the project is not underway.

Source: Interviews with local administrators and staff analysis of fee collections.

**MOST STATES REQUIRE LOCALITIES TO PAY FOR COURTHOUSE CONSTRUCTION**

Virginia is one of 37 states that require localities to provide buildings for general jurisdiction courts, and is one of the 25 states that require the same for limited jurisdiction courts, according to a federal report (Table 28). No state requires court construction to be paid for from fees, according to the report. JLARC staff were unable to identify another state where judges have authority to order a locality to construct court facilities.

Courthouses are financed by state funds in nine to ten states, depending on the jurisdictional level of the court. Of Virginia’s neighboring states, only Kentucky pays for the construction of all court buildings. Maryland pays for the construction of court buildings that house the limited jurisdiction district courts, while requiring localities to pay for the general jurisdiction circuit court buildings. North Carolina requires the localities to build and pay

for court facilities, and the decision to build or renovate is solely the decision of the county commissioners.

**Types of Courts**

General jurisdiction courts are defined by the U.S. Bureau of Justice Statistics as “the highest trial court in a state, where felony criminal cases and high stakes civil suits are adjudicated.” A limited jurisdiction trial court “typically holds preliminary hearings in felony cases and has exclusive jurisdiction over misdemeanor and ordinance violation cases, with civil jurisdiction restricted to a fixed dollar amount.” In Virginia, circuit courts are courts of general jurisdiction while district courts are courts of limited jurisdiction.

**Table 28: Localities Pay for Court Buildings in Most States**

Who Pays?	Courts of General Jurisdiction	Courts of Limited Jurisdiction
Localities	37 states	25 states
State	10	9
Combination	1	11
Not Reported	2	5
Total	50	50

Note: Virginia circuit courts are courts of general jurisdiction. Virginia district courts are courts of limited jurisdiction.

Source: U.S. Bureau of Justice Statistics, *State Court Organization, 2004*.

**REGIONAL CONSOLIDATION OF COURTS HAS POTENTIAL FOR OPERATIONAL AND CAPITAL SAVINGS**

There may be some unexplored opportunities for localities to share courthouse construction costs. By tradition and history, Virginia has courts and courthouses in nearly every city and county. Several are within a few minutes’ drive of each other; some are within a short walk of each other.

*The Staunton courthouse houses the Staunton Circuit Court and Circuit Court Clerk. Three blocks away, the Augusta County courthouse houses the Augusta County Circuit Court and Circuit Court Clerk. The City of Waynesboro’s courthouse with its Circuit Court Clerk is about 12 miles away, within Augusta County.*

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*The Salem Circuit Courthouse is about four blocks from the Roanoke County Circuit Courthouse. The Charlottesville Circuit Courthouse is across the street from the Albemarle County Circuit Courthouse.*

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*The Buena Vista Circuit Court Clerk operates out of the city’s municipal building, seven miles from the new Rock-bridge County Courthouse.*

The 1973 court reorganization continued the then-existing arrangement organizing localities into 31 circuits. Only a few changes have occurred in the subsequent 36 years. The General Assembly has added judgeships and other staff in response to

growth in workload and population, but there has been no significant reconsideration of circuit boundaries since at least 1973.

With the exceptions listed in Table 29, each city and county has its own circuit and district courts, and each court has a clerk and other staff. Thus there are 120 circuit courts and circuit court clerks in 31 circuits, and 201 district courts and district court clerks in 32 districts.

**Table 29: Circuit Court Clerks Shared Between Localities**

County/City
Arlington/Falls Church
Alleghany/Covington
Bedford/Bedford City
Fairfax/Fairfax City
Grayson/Galax
Greensville/Emporia
James City/Williamsburg
Prince William/Manassas/Manassas Park
Rockbridge/Lexington
Rockingham/Harrisonburg
Southampton/Franklin
Wise/Norton
York/Poquoson

Note: The city of Winchester and Frederick County consolidated their district and circuit courts but not their circuit court clerks, although they are all in one building in Winchester.

Source: Compensation Board, Report of the Judicial Council.

Localities could economize by sharing one courthouse and/or one circuit court clerk between two localities. Sharing a courthouse would mean one facility could serve the courts of two or more localities, as is the case in the localities listed in Table 29. Some costs might increase, such as transportation of prisoners, but construction costs would be split between two or more localities, and the number of circuit court clerks and chief district clerk positions could also be reduced.

Statutes set out a procedure for two or more localities to share a constitutional officer, such as a circuit court clerk (*Code of Virginia* §15.2-1602). In 13 cases covering 27 localities, circuit court clerks' operations are consolidated, as noted in Table 29. In these instances, multiple localities are served by one circuit court and one circuit court clerk. JLARC staff interviews with circuit court clerks and local officials in 19 localities suggested that the idea of consolidating or regionalizing clerks' services and courthouses has rarely been considered.

All but one of the instances of consolidated circuit court clerks appear to have been in place prior to the 1973 court reorganization,

and may date from the time when smaller cities (less than 10,000) were considered “cities of the second class” and as such could share constitutional officers with adjacent counties (the prospect of sharing officers was broadened with the adoption of *Code* §15.2-1602). In the one case of consolidation since then, the circuit courts for the cities of Manassas and Manassas Park and Prince William County were consolidated by statute into one circuit court and one circuit court clerk in 1976-1977.

If two or more circuit court clerks’ operations were consolidated some savings would accrue to both the State and localities. Although consolidating two or more clerks’ operations would not eliminate any workload, it could eliminate the need for one or more clerk’s offices and clerk positions, with subsequent savings for localities and the State Compensation Board.





# List of Recommendations

## Operational and Capital Funding for Circuit and District Courts

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1. The Judicial Council of Virginia should review court fees set out in the *Code of Virginia* and recommend to the General Assembly a schedule of fees which provides for appropriate recovery of court operating costs while balancing concerns related to access to court services and the judicial process.
2. The General Assembly may wish to amend §15.2-2239 of the *Code of Virginia* to specify that, in preparing a capital improvement program, the local planning commission consult with judges and court clerks as well as the chief administrative officer or other executive head of the government of the locality, the heads of departments, and interested citizens and organizations.
3. The Supreme Court may wish to clarify the purpose and intended use of the Virginia Courthouse Facility Guidelines. If the Guidelines are intended to be used as building and evaluation standards for local courts, the guidelines should be periodically revised with input from the public and other relevant stakeholders to enhance public acceptance and ensure that they represent reasonable standards.
4. The General Assembly may wish to amend §17.1-281 of the *Code of Virginia* to delete the role of the Department of General Services in certifying courthouses as out of compliance with the Supreme Court's Virginia Courthouse Facility Guidelines. The amended language should authorize localities to adopt an ordinance implementing a three dollar per case fee for courthouse construction and maintenance. This \$3 fee could also be combined with the \$2 courthouse maintenance fee, which is already authorized to be spent on courthouse construction or renovation.



## Study Mandate

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Appropriation Act -- Chapter 781, 2009 Acts of Assembly

Item 29F.

The Joint Legislative Audit and Review Commission (JLARC) shall review the funding of the District and Circuit Courts in Virginia, including courthouse construction, operation, and maintenance, including the extent to which the current fee structure provides an equitable, efficient and sufficient source of revenues for this purpose across the Commonwealth and report its findings by November 1, 2009.



# Appendix **B**

## Research Activities and Methods

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Key research activities and methods for this study included:

- data collection and analysis,
- structured interviews with State agencies,
- site visits to local courthouses and structured interviews with circuit court clerks and city or county administrative staff,
- online surveys of district and circuit court clerks,
- requests for comments from chief district and circuit court judges, and
- document reviews.

### DATA COLLECTION AND ANALYSIS

JLARC staff collected and analyzed data from the State Compensation Board, Auditor of Public Accounts' *Commonwealth Data Point* and *Comparative Report*, the Supreme Court Financial Management System, and Appropriation Acts of various years. These data were used to identify and analyze State and local expenditures on court-related activities, as well as the court-generated revenues they received.

State expenditures on district and court-related functions were identified using *Commonwealth Data Point*. Expenditures on circuit court clerks and sheriffs' court security are reported under the Compensation Board, and expenditures on district and circuit courts are found under the Supreme Court.

Local financial support for court operations was identified using data from *Commonwealth Data Point* and the *Comparative Report*. The *Comparative Report* data shows total local expenditures—including Compensation Board reimbursements—for circuit court clerks, sheriffs' court security, and other courts. The local portions of spending on circuit clerks and sheriffs' court security were found by subtracting Compensation Board support for these functions from the total expenditures shown in the *Comparative Report*. As the data in the *Comparative Report* are gathered through submissions by individual localities, in several cases the reported local expenditure on circuit clerks and sheriffs' court security were less

than Compensation Board spending for these functions as reported in *Commonwealth Data Point*. Where this occurred, the Compensation Board amount was substituted for total expenditures and the local subsidy was assumed to be zero. This substitution was made for circuit court clerks' expenditures in six localities, and for sheriffs' court security in 48 localities. Much of the deviation in reported total expenditures for sheriffs' court security is likely the result of difficulty in differentiating between expenditures for sheriffs' court-related functions and those made for sheriffs' other duties.

Data from the *Comparative Report* were also used to identify local expenditures for the personnel and non-personnel costs court activities. For each court-related activity (such as circuit court clerks), expenditures are identified for several objects (such as fringe benefits or contractual services). Local expenditures on personnel costs were identified as the sum of expenditures for personal services and for fringe benefits. Non-personnel expenditures were defined as the sum of the following object expenditures: joint activities, capital outlay or depreciation, rentals and leases, contractual services, internal services, less recovered costs, and other charges.

State and local revenues generated by the courts were found using data from the Supreme Court's financial management system. Upon receipt by the respective clerk, collections of district and circuit court fees and fines are clearly identified by the financial management system as being either State or local revenues. Revenues are reported by fee and fine type, allowing analysis of the various specific revenues collected by courts, such as recordation taxes and courthouse maintenance fees; this also allowed analysis of both general fund and special fund revenues.

## **STRUCTURED INTERVIEWS**

JLARC staff conducted interviews with staff at various State and non-state entities regarding the process of building and renovating courthouses in Virginia. For example, interviews with were conducted with staff at the

- Supreme Court of Virginia,
- Auditor of Public Accounts (APA),
- Department of General Services,
- Compensation Board,
- Virginia Circuit Clerks Association (VCCA),
- Virginia Municipal League,

- Virginia Association of Counties, and
- Attorney General's Office.

Interviews with the Supreme Court, APA, and Compensation Board focused on court funding and the availability of data. VCCA provided background about the office of the circuit court clerk, including clerk concerns and duties. Staff at the Supreme Court and Attorney General's Office also provided information about the mandamus process and cases in which judges filed suit against their localities to address courthouse needs.

JLARC staff also met with staff at Moseley Architects, an architectural firm in Richmond that has designed several courthouse projects in the State. Moseley staff provided information about the courthouse construction process and factors that typically drive local projects.

### **LOCAL COURTHOUSE VISITS AND INTERVIEWS WITH COURT AND LOCAL STAFF**

Based on discussions and contacts with circuit court clerks, staff at the Virginia Municipal League, the Virginia Association of Counties, several city and county attorneys, and local newspapers, JLARC staff identified a list of potential localities to visit with recent or planned courthouse expansion, renovation, or construction projects. As staff visited localities, the list of potential locations with courthouse projects grew.

In total, JLARC staff visited circuit court clerks and courthouses in 20 localities: Appomattox, Augusta, Colonial Heights, Fredericksburg, Hanover, Isle of Wight, Lancaster, Middlesex, Montgomery, Nelson, New Kent, Norfolk, Portsmouth, Richmond (City), Rockbridge, Shenandoah, Spotsylvania, Stafford, Staunton, and Surry.

During site visits, staff conducted structured interviews with circuit court clerks and local administrative staff, such as the city or county administrator. In many cases, staff also toured the courthouse facility to better identify the needs or improvements court and local government staff described.

Meetings with clerks and county administrators focused on how courthouse needs were identified, a description of the project and process, how long the process took, who was involved, obstacles from both the court and local government perspectives, and local funding of the project, including the capital planning process. In addition, factors that aided, delayed, or prevented the process were discussed. For instance, JLARC staff were interested in cases that resulted in a judge issuing a *writ of mandamus*.

JLARC staff generally met with court and local government staff separately. The objective was to understand the process from both the court and the local government perspective. In most instances, court clerks and local administrators described the problems and process very similarly. Additionally, clerks and local administrators were often able to describe the involvement and concerns of other stakeholders, such as judges and members of local councils or boards of supervisors.

Information provided during local site visits was critical to developing issues described in Chapters 4 and 5. In particular, these discussions provided insight about identifying courthouse needs, planning and funding courthouse projects, and the *mandamus* process. In addition, site visits were used as case studies to demonstrate various key points discussed throughout the report.

## **SURVEYS OF COURT CLERKS**

Two online surveys were administered of the chief district and circuit court clerks. Clerks were contacted by email using addresses provided by the Supreme Court and State Compensation Board. In total, the survey was emailed to 120 circuit court clerks and 194 district court clerks. By surveying both circuit and district court clerks, JLARC staff expected to receive a response from at least one clerk in most localities.

The intent of the surveys was to identify the number of localities with current or recent courthouse projects. In addition, clerks were asked questions about courthouse construction fees and the use of the Supreme Court's information technology (IT) systems. The survey questions for circuit and district court clerks were very similar, except district court clerks were not asked about their participation in Supreme Court IT systems because all district courts are required to use those systems.

The response rates for the surveys were high. Seventy-three percent of circuit court clerks (89) and 81 percent of district court clerks (158) responded to the survey. In total, their responses represented 124 out of 129 localities.

While survey responses provided information about most localities, several factors had to be considered when interpreting the results. First, new clerks responding to the survey may not be aware of projects completed before they took office. Second, because construction and renovation is handled by the respective local government, court clerks may not have accurate or current information about project costs. Third, in some cases there were discrepancies in information provided by different clerks in the same localities. While JLARC staff were able to confirm some of

the larger project costs and descriptions through structured interviews and follow-up with city or county administrative staff, not all project costs were confirmed and, therefore, cost data should be interpreted as estimates.

Analysis of the survey results were used mostly to describe recent and current courthouse projects in Chapters 4 and 5. A number of different analyses were performed. For instance, JLARC staff

- estimated the number of courthouses;
- summarized clerk opinions about the adequacy of courthouses (Chapter 4, Table 18);
- analyzed the relationship between recent courthouse projects and clerk opinions about the adequacy of court facilities (Chapter 4, Table 22)
- categorized clerks by their range of reported deficiencies (Chapter 4, Table 17);
- determined whether clerks so categorized expect a courthouse project in the next two to five years (Chapter 4, Table 24);
- synthesized descriptions of courthouse projects and funding;
- analyzed written comments, and
- created tables with summary information.

Although the accuracy of all survey responses could not be confirmed, JLARC staff did spot-check various results for consistency.

### **Number of Courthouses in Virginia**

JLARC staff estimated that there are more than 170 courthouses in Virginia using survey responses and other sources, including courthouse addresses provided by the Supreme Court website. Several steps were required to reach this estimate, and the exact number could be higher.

In general, this analysis was based on court clerk responses to two survey questions. First, district court clerks were asked whether their court is housed in the same facility as the circuit court. Second, district and circuit court clerks were asked to select which functions are housed in their court facility. Based on their responses to these questions, an unduplicated dataset was created with variables indicating whether the district and circuit courts were housed together or separately in each locality.

If clerk responses indicated that the courts are housed together, JLARC staff estimated that the locality has only one courthouse.

In some cases it is possible that a clerk who did not respond to the survey may be housed in a separate facility. Therefore, this analysis could understate the number of localities with multiple courthouses.

In instances where it appeared that a locality has more than one courthouse, JLARC staff took several additional steps to try to determine how many courthouses each locality has. For instance, in a few localities, responses from district court clerks suggested that at least one district court is housed with the circuit court and one is housed separately. For example, in Chesterfield, the General District and Circuit Court are in the same facility, and the Juvenile and Domestic Relations court is in a separate building. JLARC staff tried to confirm the arrangement of courts in these localities using addresses on the Supreme Court website or other sources.

JLARC staff also reviewed responses for localities in which district court clerks reported being housed separately from the circuit court. By comparing the responses of different district court clerks within a locality, and through additional research, staff were able to identify several instances in which localities have three or more courthouses. For example, Fredericksburg has three separate courthouses for the circuit court, general district court, and juvenile and domestic relations court.

**Analysis of Courthouse Adequacy**

To determine the adequacy of courthouses in Virginia, clerks were asked about their level of agreement with eight statements about the functionality, safety, maintenance, and accessibility of their courthouses (Table B-1). Circuit court clerk opinions were used to describe conditions of the main court facilities in each locality.

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**Table B-1: Survey Statements About the Adequacy of Courthouses**

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1. The facility is sufficiently secure.
2. There is adequate office space for staff that work there.
3. There is good public access to the building.
4. The building is efficient for the work they do.
5. The building provides separate and distinct paths for the public, judges, staff, and in-custody defendants.
6. The building complies with the requirements of the Americans with Disabilities Act (ADA).
7. Records storage is adequate.
8. Maintenance is adequate.

Source: JLARC staff survey

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To assess the adequacy of district courts housed separately from circuit courts, the opinions of district clerks who indicated their courtrooms are not in the main court facility were used. It should be noted that because some localities have multiple district clerks who may have responded, these opinions may be duplicated by court facility.

In order to test the notion that construction, renovation, and expansion projects improve the adequacy of court facilities, the opinions of circuit court clerks who indicated there was a circuit court project in the past ten years were compared to those who did not. The opinions of 27 clerks that reported a project addressing either the circuit court or both the circuit and district courts in their locality in the past ten years were compared to the opinions of 61 district clerks that did not report a project pertaining to their courthouse. The conclusions are discussed in Chapter 4.

### **Analysis of Courthouse Deficiencies**

Based on the above questions about the adequacy of courthouses, clerks were identified as having reported zero to eight courthouse deficiencies. A clerk was reported as having identified a deficiency if the clerk disagreed or strongly disagreed with any of the eight statements pertaining to their courthouse (Chapter 4, Table 17). In some cases, various clerks described the adequacy of the same courthouse differently. This may have resulted from varying clerk opinions about the same conditions, or varying conditions within the same courthouse (for instance, the adequacy of district versus circuit courtrooms). Therefore, this analysis reflects the views of individual clerks and is not unduplicated by courthouse.

Information about current and planned projects were used in conjunction with the deficiency analysis to determine whether clerks identifying the greatest number of courthouse deficiencies expected their localities to address those shortcomings. First, JLARC staff determined whether the clerk identified a current project pertaining to either their court or both courts. Second, staff identified clerks that indicated their locality is likely to undergo new construction, expansion, or renovation of either the circuit or district courthouse in the next two to five years (clerks were not asked to identify which courthouse(s) would be addressed). This information was used to determine how many clerks within each range of deficiencies indicated that their locality has either a current courthouse project or future plan for one. Clerks were not asked to specify whether the projects would address the specific deficiencies they identified.

## Courthouse Projects and Funding

A table was compiled with project information from all clerk responses for a given locality. This analysis was primarily qualitative in nature, as some interpretation of project descriptions and other information was necessary. While the number of projects and their associated costs provide a picture of recent, current, and planned courthouse projects, the list may not be complete or entirely accurate. Survey data on courthouse projects was supplemented in some cases by information collected through other sources, such as site visits, follow-up interviews, or newspaper articles. JLARC staff concentrated follow-up efforts on significant projects in 2009, followed by those occurring since 2005. Because cost estimates provided by clerks were not expected to be completely accurate, staff focused on case studies to provide a more meaningful illustration of the financial impact of courthouse projects on localities.

In general, JLARC staff considered a project significant if the cost estimate provided was greater than \$500,000. In some cases, a project was categorized by JLARC staff as less significant if the cost was not provided but the project description suggested that the project was less significant in scope. Because local definitions of capital projects varied, JLARC staff used the Department of Planning and Budget's (DPB) definition provided in their "2010-2016 Six-Year Capital Budget Requests" document. For instance, the minimum value for a project's inclusion in a local capital improvement plan ranged from \$2,500 to \$500,000 in localities visited by JLARC staff.

A determination of whether a current project was a construction or renovation project was based on whether either survey responses or other sources indicated that a project involved the addition of new space. If new space was added, it was described as construction. For instance, part of DPB's description of a construction project states, "any addition, expansion, or extension to a structure that adds to its overall exterior dimensions." Otherwise, it was considered an improvement or renovation project.

## Other Survey Analysis

Various summary tables were prepared by analyzing survey data or a subset of survey data. In addition, written comments provided by clerks were analyzed by content and categorized by the type of problem or concern they described. This material was used to supplement discussions of courthouse deficiencies.

### **REQUEST FOR JUDGES' INPUT**

To provide judges with an opportunity to comment on the process of courthouse construction, renovation, or expansion, JLARC staff mailed letters to all 95 chief circuit and district court judges. JLARC staff received comments from six judges.

### **DOCUMENT AND LITERATURE REVIEW**

Document and literature reviews were not primary research methods for this report. However, JLARC staff did review several previous studies related to the Virginia court system, which are discussed in Chapter 1. In addition, staff reviewed the Supreme Court's *Virginia Courthouse Facility Guidelines*, which are described and cited in Chapter 4. Staff reviewed sections of the *Code of Virginia* related to the mandamus process, clerk duties, records storage, and a referendum for moving courthouses to non-contiguous locations.



Appendix  
**C**

## Difference Between Local Fee and Fine Revenues and Local Expenditures on Courts

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JLARC staff has determined that statewide, localities in FY 2008 spent at least \$10.6 million more for the operation of court-related functions than they collected in court fee and fine revenues. This figure underestimates total local expenditures on courts for several reasons. First, data provided in the APA's *Comparative Report* are self-reported by localities, and are not audited. In several instances, the analysis showed that local expenditures on circuit court clerks and sheriffs' court security were negative; in these instances, expenditures were assumed to be zero, as further explained in Appendix B. However, as localities are required by the *Code of Virginia* to provide office space and operating support for these functions, this upward revision still underestimates local support.

This figure further understates local support of court-related functions in that it does not include local expenditures for court capital maintenance, renovation, and construction. Local capital expenditures for courts are not tracked by any central agency, and JLARC staff were unable to identify any statewide data showing such expenditures. Local definitions of capital expenditures also vary greatly, making comparison of capital expenses between localities difficult or impossible.

With the aforementioned caveats, the net difference between local court expenditures and court fee and fine revenues varied greatly by locality, as seen in Table C-1. Entries in the table were calculated by subtracting local fee and fine revenue from local expenditures on court related functions. The net difference ranged from highs of \$11.4 million in Virginia Beach and \$2.9 million in Wythe County, to lows of \$16.7 million in Fairfax County and \$9.2 million in Alexandria.

**Table C-1: Difference Between Local Court Expenditures and Local Fee and Fine Revenues in Virginia Localities, FY 2008**

Locality	Net Difference	Locality	Net Difference	Locality	Net Difference
Accomack	289,188	Franklin County	(620,528)	Patrick	(236,251)
Albemarle	(460,220)	Frederick	(172,160)	Petersburg	1,385,392
Alexandria	(9,240,609)	Fredericksburg	(711,355)	Pittsylvania	(313,186)
Alleghany	137,847	Galax	(145,458)	Portsmouth	(1,603,458)
Amelia	268,386	Giles	14,049	Powhatan	(106,249)
Amherst	(84,061)	Gloucester	(98,547)	Prince Edward	256,888
Appomattox	(188,548)	Goochland	(18,261)	Prince George	141,224
Arlington	(3,360,595)	Grayson	(76,194)	Prince William	(284,083)
Augusta	589,358	Greene	15,426	Pulaski	(120,747)
Bath	(90,799)	Greensville	2,837,136	Radford	170,815
Bedford	(175,618)	Halifax	(36,916)	Rappahannock	(71,907)
Bland	616,314	Hampton	772,833	Richmond City	(4,663,066)
Botetourt	(247,259)	Hanover	670,257	Richmond County	34,398
Bristol	138,656	Henrico	2,703,174	Roanoke City	(1,025,186)
Brunswick	1,145,234	Henry	(78,092)	Roanoke County	907,711
Buchanan	(740,939)	Highland	(47,091)	Rockbridge	181,450
Buckingham	(33,567)	Hopewell	(253,303)	Rockingham/Harrisonburg	1,817,077
Buena Vista	(52,410)	Isle of Wight	416,397	Russell	124,194
Campbell	(161,696)	King & Queen	25,693	Salem	(381,257)
Caroline	1,498,738	King George	(259,304)	Scott	(52,841)
Carroll	(47,074)	King William	27,263	Shenandoah	275,461
Charles City	21,583	Lancaster	(20,891)	Smyth	656,152
Charlotte	403,364	Lee	(521,372)	Southampton	994,252
Charlottesville	(778,765)	Loudoun	1,267,153	Spotsylvania	(534,359)
Chesapeake	(4,040,488)	Louisa	(207,741)	Stafford	(580,809)
Chesterfield	(2,215,568)	Lunenburg	9,879	Staunton	(220,444)
Clarke	562,328	Lynchburg	(618,941)	Suffolk	(1,685,309)
Colonial Heights	385,433	Madison	(395,727)	Surry	(146,931)
Craig	2,297	Martinsville	(132,813)	Sussex	1,820,429
Culpeper	23,474	Mathews	(203,755)	Tazewell	235,526
Cumberland	74,361	Mecklenburg	(426,097)	Virginia Beach	11,417,663
Danville	366,959	Middlesex	(53,112)	Warren	486,767
Dickenson	(356,855)	Montgomery	747,101	Washington	1,198,606
Dinwiddie	933,005	Nelson	(33,241)	Waynesboro	(133,962)
Essex	119,117	New Kent	183,701	Westmoreland	(110,251)
Fairfax City	734,935	Newport News	(939,644)	Williamsburg	(2,344,916)
Fairfax County	(16,686,680)	Norfolk	1,628,510	Winchester	(379,418)
Falls Church	(195,873)	Northampton	733,958	Wise	(151,332)
Fauquier	(1,091,920)	Northumberland	(200,660)	Wythe	2,913,333
Floyd	(152,107)	Nottoway	81,642	York	(390,034)
Fluvanna	(825,205)	Orange	374,278		
Franklin City	83,049	Page	10,435		

Source: APA Comparative Report, Supreme Court Financial Management System.

**Appendix**  
**D**

## Agency Responses

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As a part of the extensive validation process, State agencies and other entities involved in a JLARC assessment are given the opportunity to comment on an exposure draft of the report. Appropriate technical corrections resulting from comments provided by these entities have been made in this version of the report. This appendix includes the written response from the Executive Secretary of the Virginia Supreme Court.



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# SUPREME COURT OF VIRGINIA



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Mr. Philip A. Leone, Director  
Joint Legislative Audit and Review Commission  
General Assembly Building, Suite 1100  
Capitol Square  
Richmond, VA 23219

Dear Mr. Leone:

Thank you for the opportunity to review and comment on the Exposure Draft Report, Operational and Capital Funding for District and Circuit Courts, dated October 23, 2009.

I am satisfied with the majority of the report; however, I have a concern with the conclusion that the court system takes in less revenue for the Commonwealth of Virginia than it collects. Using Fiscal Year 2008 as an example, the report indicates that the Commonwealth received \$750.9 million in revenue from the courts. It was further reported that total expenditures for court operations totaled \$411.6 million for that fiscal year. Subtracting court operational expense from total revenue collected would result in a \$339.3 million surplus for the State. However, the report reflects a distinction between court costs, fines, etc. and the recordation taxes on land transactions. This distinction results in a decision to exclude recordation taxes, \$449.9 million, from the revenue collected by the courts. This supports a conclusion that the State spent \$199.5 million more to operate the court system in FY 2008 than it collected in revenue.

As I discussed with Walt Smiley, my concern with this approach is that it does not make a similar adjustment for the court system expenditures that are necessary for the collection of these recordation taxes. These recordation fees/taxes or General Fund revenues are collected by utilizing significant court resources. The collection of these taxes is a statutorily prescribed duty of the circuit courts. A significant number of court personnel is dedicated to this function, along with the storage and management of these documents for inspection by the public. Likewise, the automated systems that have been developed by the Office of the Executive Secretary to support these collections and services require significant resources to enhance, maintain and support.

Again, thank you for the opportunity to review and comment on this report.

Very Truly Yours,

A handwritten signature in black ink that reads "KRH".

Karl R. Hade

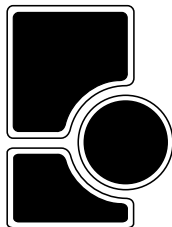
KRH:sk











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