

Joint Legislative Audit and Review Commission



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

Commission Briefing

November 9, 2009

Study Mandate

- 2009 Appropriation Act, Item 29F
- 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”

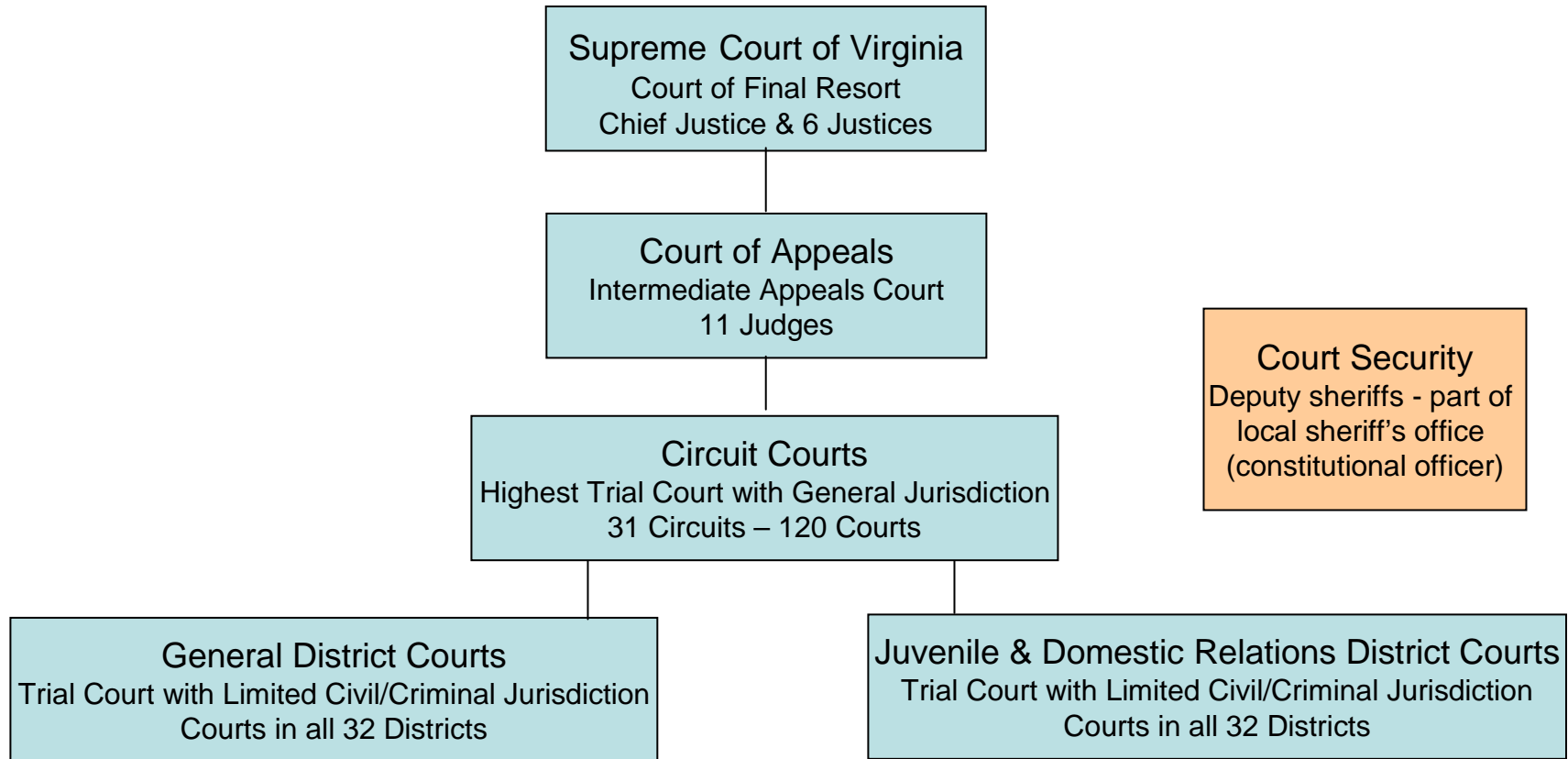
Research Methods

- Analysis of data from State Compensation Board, Auditor of Public Accounts, and Supreme Court
- Structured interviews
- Local courthouse visits and interviews with court and local government staff
- Surveys of district and circuit court clerks
- Letters to all chief district and circuit court judges requesting input
- Document and literature review, including *Virginia Courthouse Facility Guidelines* and *Code of Virginia*

In This Presentation

- Background
- Process for Courthouse Construction and Renovation
- Funding of Courthouse Construction and Renovation
- State Court Expenditures and Revenues
- Local Court Expenditures and Revenues

Court Organization



Court Jurisdiction

Circuit Courts

- Civil suits exceeding \$15,000
- Concurrent jurisdiction with district courts for civil claims between \$4,500 and \$15,000
- Jury trials
- Felony criminal cases
- Misdemeanor charges originating from grand jury indictment
- Misdemeanor appeals
- Divorces

District Courts

- Original jurisdiction of claims \$4,500 or less
- Concurrent jurisdiction with circuit courts of civil claims up to \$15,000
- Preliminary felony hearings
- Misdemeanors
- Traffic infractions
- Domestic matters (adoption, custody, etc.)

Role of Court Clerks

Circuit Court Clerks

- 120 clerks
- Locally elected constitutional officer
- Collect fees, fines, and taxes
- Over 800 responsibilities
- Manage juries and other administrative functions
- Probate wills, appoint guardians, record deeds and marriage licenses
- Keep court records in accordance with statute

District Court Clerks

- 1,540 staff positions approved by Committee on District Courts
- All State employees
- Collect fees, fines, and taxes
- Administer court caseload

Court System Funding

	<u>Salaries 100% State Funded</u>	<u>Localities Can Supplement</u>	<u>State Provides Offices & Courtrooms</u>	<u>Who Pays Operating Expenses</u>
Supreme Court	Yes	No	Yes	State
Court of Appeals	Yes	No	Yes	State
Circuit Court Judges	Yes	No	No	Mostly Local
Circuit Court Clerks	Yes*	Yes	No	Mostly Local
District Court Judges	Yes	No	No	Mostly Local
District Court Clerks	Yes	Yes	No	Mostly Local

*Compensation Board reimburses localities for base salaries.

Most States Require Localities to Pay for Courthouse Construction

Who Pays?	Number of States	
	Courts of General <u>Jurisdiction</u> ^a	Courts of Limited <u>Jurisdiction</u> ^b
Localities	37	25
State	10	9
Combination	1	11
Not reported	2	5

^a Virginia's circuit courts

^b Virginia's district courts

Courthouses Vary in Design

- More than 170 local courthouses
 - About 70% of localities have single courthouse
 - Mainly serve court purposes, though at least one third also house local offices
- 63 courthouses on Virginia Landmarks Register
 - Most of these also on National Register of Historic Places
 - King William County Courthouse dates to 1725
 - Northampton County has court records to 1632

Nelson County Courthouse*



*On Virginia Landmarks Register and the National Register of Historic Places

Lancaster County Courthouse*



*On Virginia Landmarks Register and the National Register of Historic Places

Appomattox County Courthouse



Surry County Courthouse*



*On Virginia Landmarks Register and the National Register of Historic Places

Portsmouth Courthouse



Henrico County Courthouse



Richmond City Courthouse



Isle of Wight County Courthouse



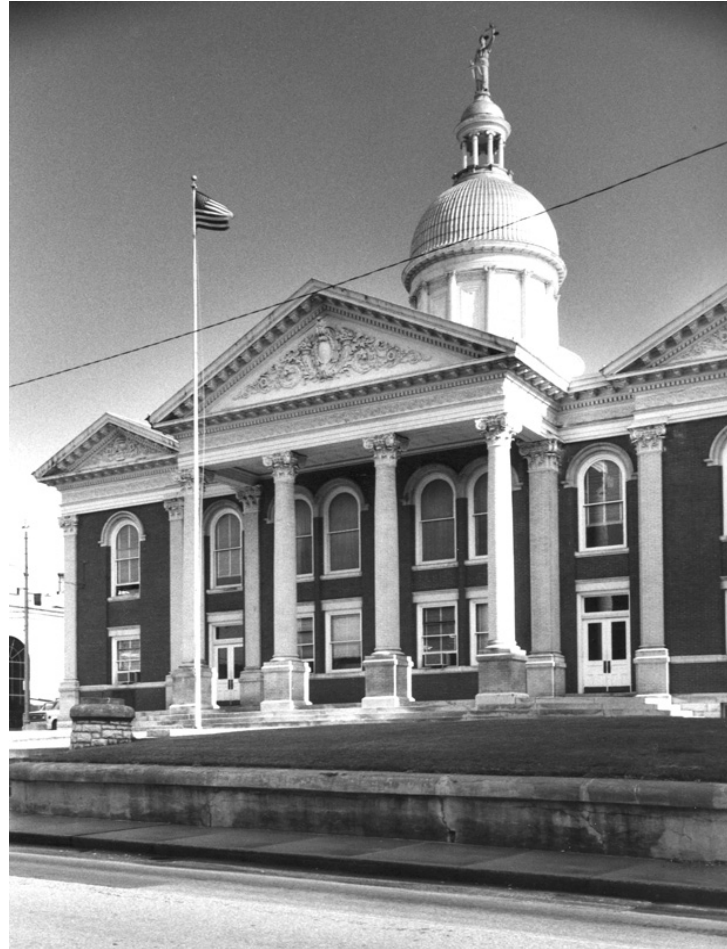
New Kent County Courthouse



Rockbridge County Courthouse



Augusta County Courthouse*



*On Virginia Landmarks Register and the National Register of Historic Places
Source: Department of Historic Resources.

Fairfax County Courthouse



Source: Fairfax County website

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Finding

- Many localities are responsive to courthouse problems
- Most court clerks report courthouse deficiencies, with about half reporting security concerns

Many Localities Are Responsive to Courthouse Needs

Locality 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

- Several factors can affect local responsiveness including competing local priorities and citizens' concerns
 - In one county, citizens filed a lawsuit opposing renovation designs they felt did not preserve the historic value of the courthouse

Most Court Clerks Indicate Courthouse Problems in One or More Key Areas

- More than 70% reported a deficiency in at least one area
- About a quarter reported a deficiency in 6 or more areas

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

Court Clerks Report Various Problems

Key Courthouse Function	Circuit	District
Inadequate records storage	65%	54%
Inadequate office space for staff	53	46
Lacks distinct paths for public, judges, staff, and in-custody defendants	44	46
Insufficiently secure	43	52
Inefficient for the work	39	48
Inadequate maintenance	39	43
Inadequate public access	30	24
Out of compliance with Americans with Disabilities Act	20	21

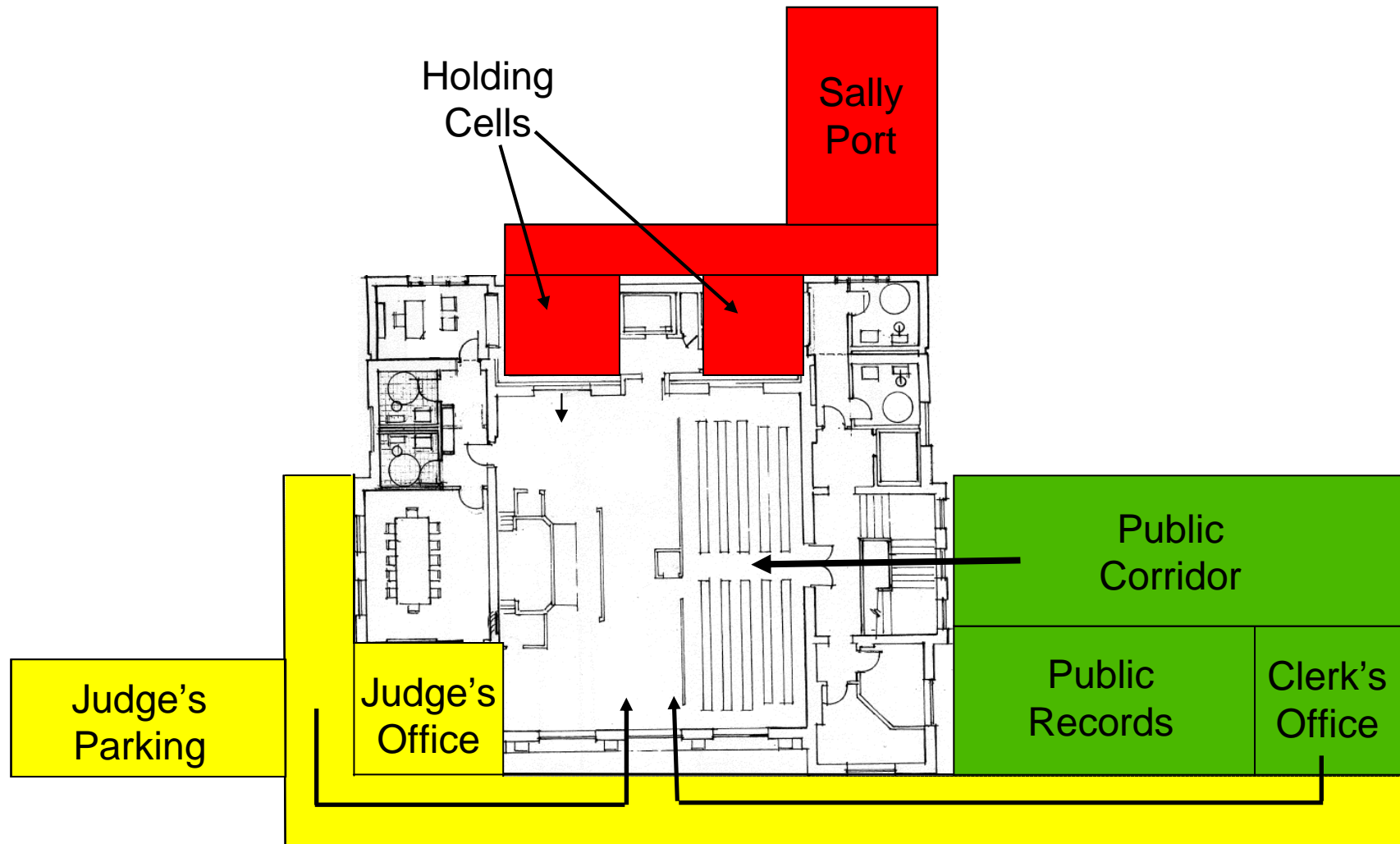
About Half of Court Clerks Report Security Concerns

- Holding cells in one courthouse were improperly constructed, reportedly resulting in a defendant attempting escape through ceiling tiles.
- “Our Courthouse is not secure in any way. There are no metal detectors. [The] judge has to park in a 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.”

About Half of Court Clerks Report Security Concerns

- “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...it is very insecure for them.”
- “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.”

Distinct Circulation Paths Helps Ensure Security



Other Courthouse Deficiencies

- Functional and accessibility problems were identified by at least 13 clerks
 - One locality reported three J&DR courtrooms in one building and a fourth in a building across the street, while the juvenile court services unit and court clerk's offices are in separate buildings located elsewhere.
 - "Quite often citizens are sent around the entire downtown area trying to comply with the courts' directives," according to the clerk

Other Courthouse Deficiencies

- At least 54% of court clerks said they lacked adequate space for records storage
 - JLARC staff observed records stored inches above standing water in one circuit courthouse
- Greater use of electronic records may reduce need for building space, but budget cuts may limit ability of clerks to scan and store older records

Findings

- Courthouse needs are not always identified during the local planning process
- Courthouse projects have addressed some deficiencies, but problems persist

Courthouse Construction Is Not Always Part of the Local Capital Planning Process

- Statutes outlining the local capital planning process do not require consultation with judges or court clerks
- Omission of judges and court clerks from the statute may lead to concerns with court buildings being overlooked

Recommendation

- **The General Assembly may wish to amend the *Code of Virginia* to specify that, in preparing a capital improvement program, the local planning commission consult with judges and court clerks**

Note: See “List of Recommendations” in written report for full text.

Recent Projects Have Addressed Some Courthouse Deficiencies

Timeframe	Localities with Projects
2005 to 2009	26
Underway or planning stages	24
Expected in next 2 to 5 years	10
TOTAL	60

- Compared to clerks with no reported project in past 10 years, circuit court clerks reporting a past project were:
 - 30% more likely to agree their courthouse provides distinct circulation paths
 - 19% more likely to agree their facilities are sufficiently secure

Less Than Half of Clerks Citing Courthouse Deficiencies Expect Localities to Undertake Projects

Number of Areas with Deficiencies	Court Clerks in Localities with Projects Underway or Expected in Next 2-5 Years	
	Circuit	District
2 or less	11%	10%
3 to 5	31	28
6 or more	43	39

Findings

- If a locality is unresponsive to courthouse issues, circuit court judges may bring legal action against the locality under *Code of Virginia* §15.2-1643

Circuit Court Judges Can Order a Locality to Correct Courthouse Problems

- If a court facility is inadequate, the circuit court can order local officials to show cause why a *writ of mandamus* should not be issued to force the locality to bring the facility into compliance
- The Supreme Court then appoints a reviewing judge who can issue such an order 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"

Expert Panel Must Review Case Before *Mandamus* Is Issued

- Before the *mandamus* order 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
- 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 renovation
- Use of panels is rare -- JLARC staff identified two cases since 2002

Judges in Some Localities Have Used Show Cause-*Mandamus* Process

Locality	Show Cause Order	Years Until Case Concluded
Hopewell City	1989	2
Henry County	1992	5
Williamsburg/James City Co.	1994	6
Brunswick County	1995	10
Warren County	1998	4
Middlesex County	1991, 1999	3
Appomattox County	2000	6
Richmond City	2001	6
Rockbridge County	2002	7
Surry County	2004	1
Smyth County	2005	Not Yet Concluded
Shenandoah County	2007	Not Yet Concluded
Portsmouth City	2008	Not Yet Concluded

Court Cases Compel Localities to Fix Courthouse Problems

- Court cases brought under *Code* §15.2-1643 have not resulted in *writs of mandamus* ordering a locality to perform construction
 - Localities generally reach consent agreement with judges
- Even in localities that were not under court order, local administrators indicated that the possibility of the process pushed their councils and boards to address courthouse issues
 - 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.”

Supreme Court *Guidelines* Utilized as Courthouse Standards

- The Supreme Court produced the *Virginia Courthouse Facility Guidelines* in 2001 as “guidelines, not standards” for courthouse construction
- The *Guidelines* are cited in show cause pleadings to demonstrate inadequacies in local facilities as well as to evaluate locally proposed solutions
- An architect familiar with many court projects in Virginia 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*

Recommendation

- **The Supreme Court may wish to clarify the purpose and intended use of the Virginia Courthouse Facility Guidelines. If they are intended to be used as building and evaluation standards for local courts, the guidelines should be periodically revised with public input.**

Note: See “List of Recommendations” in written report for full text.

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Courthouse Construction Is Costly, Due in Part to Security Concerns

- Courthouse construction costs appear to be 30 to 40 percent higher than standard commercial building costs on a per square foot basis
- Courthouses require additional elements generally not needed in other buildings such as
 - Separate circulation patterns for the general public, judges and court staff, and prisoners, often requiring multiple elevators and stairwells
 - Sally port for secure prisoner transfer from the jail
 - Secure, monitored parking for judges and jurors

Recent Courthouse Projects Cost More Than \$270 Million

Timeframe	Number of Projects	Estimated Costs (\$ in millions)
2005 to 2009	26	\$273
Future projects	17*	453
Total	43	\$726

*Cost estimates unknown or not available for 9 additional projects

- Localities have few sources of funding for courthouse projects other than local tax revenues

Newly Authorized Courthouse Construction Fee Has Unnecessary Restrictions

- The 2009 General Assembly authorized localities to impose an additional \$3 fee for courthouse construction and renovation, on top of an already authorized \$2 maintenance fee
 - The \$3 fee can only be imposed if the Department of General Services certifies the courthouse as non-compliant with the safety and security guidelines contained in the *Virginia Courthouse Facility Guidelines*
 - 11 courthouses certified out of compliance
- Localities that conduct adequate and timely maintenance and renovation may never be eligible to collect the fee
- Local officials may be reluctant to having their courthouse certified as out of compliance with safety and security guidelines

Newly Authorized Courthouse Construction Fee Provides Limited Potential for Local Revenue

- If all localities imposed the \$3 courthouse construction fee, an estimated maximum of about \$5.5 million would be raised per year statewide (could support less than \$110 million in total debt service)
 - On average, yields about \$46,000 per locality per year
- Court clerks in 54 out of 124 localities (44 percent) indicated that they expected their locality to pursue the \$3 fee

Recommendation

- **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*.**

Note: See “List of Recommendations” in written report for full text.

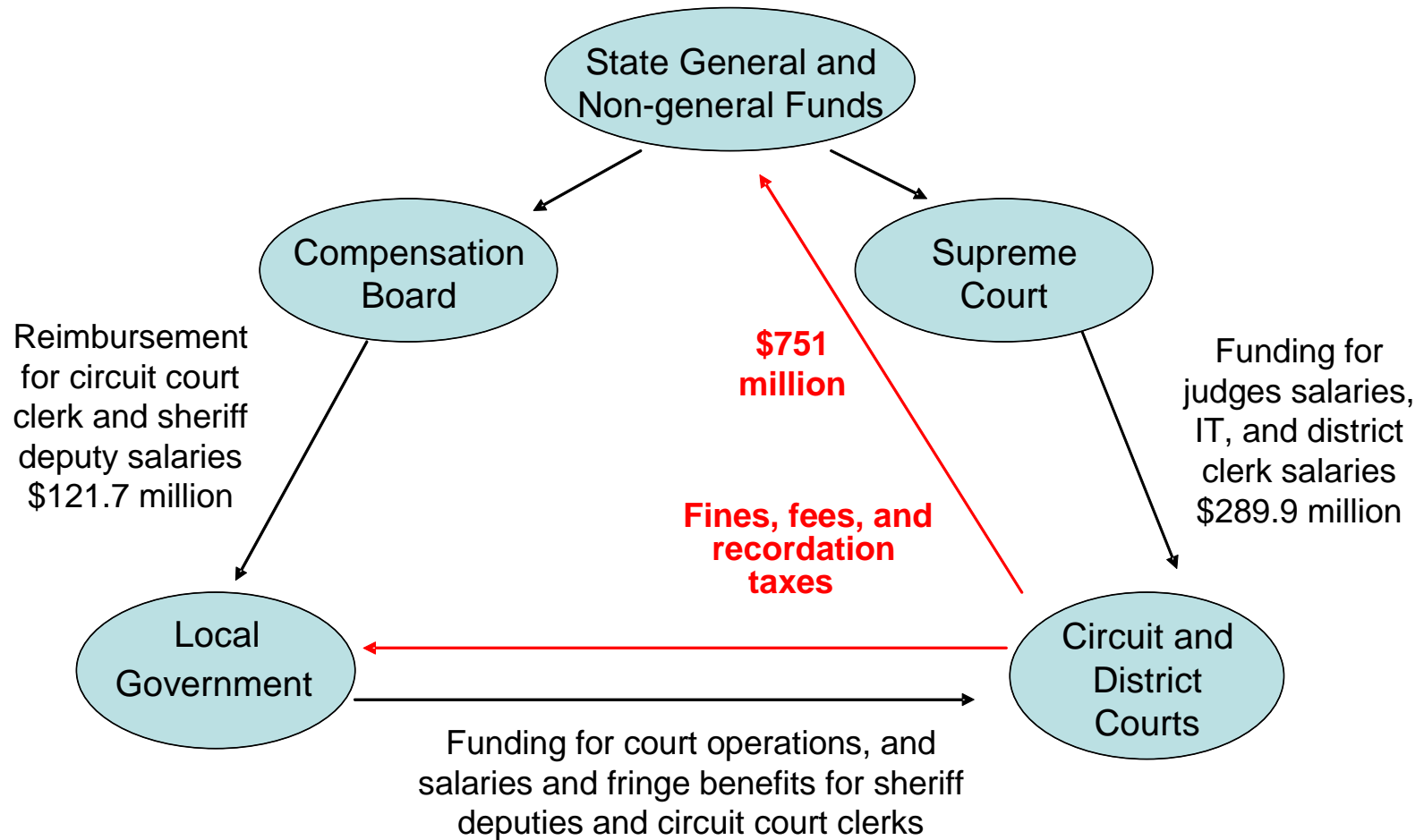
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Court Funding and Revenues Are Substantial

FY 2008	State (\$ millions)	Local (\$ millions)	Total (\$ millions)
Expenditure	\$412	\$184	\$596
Revenue	\$751	\$334	\$1,085

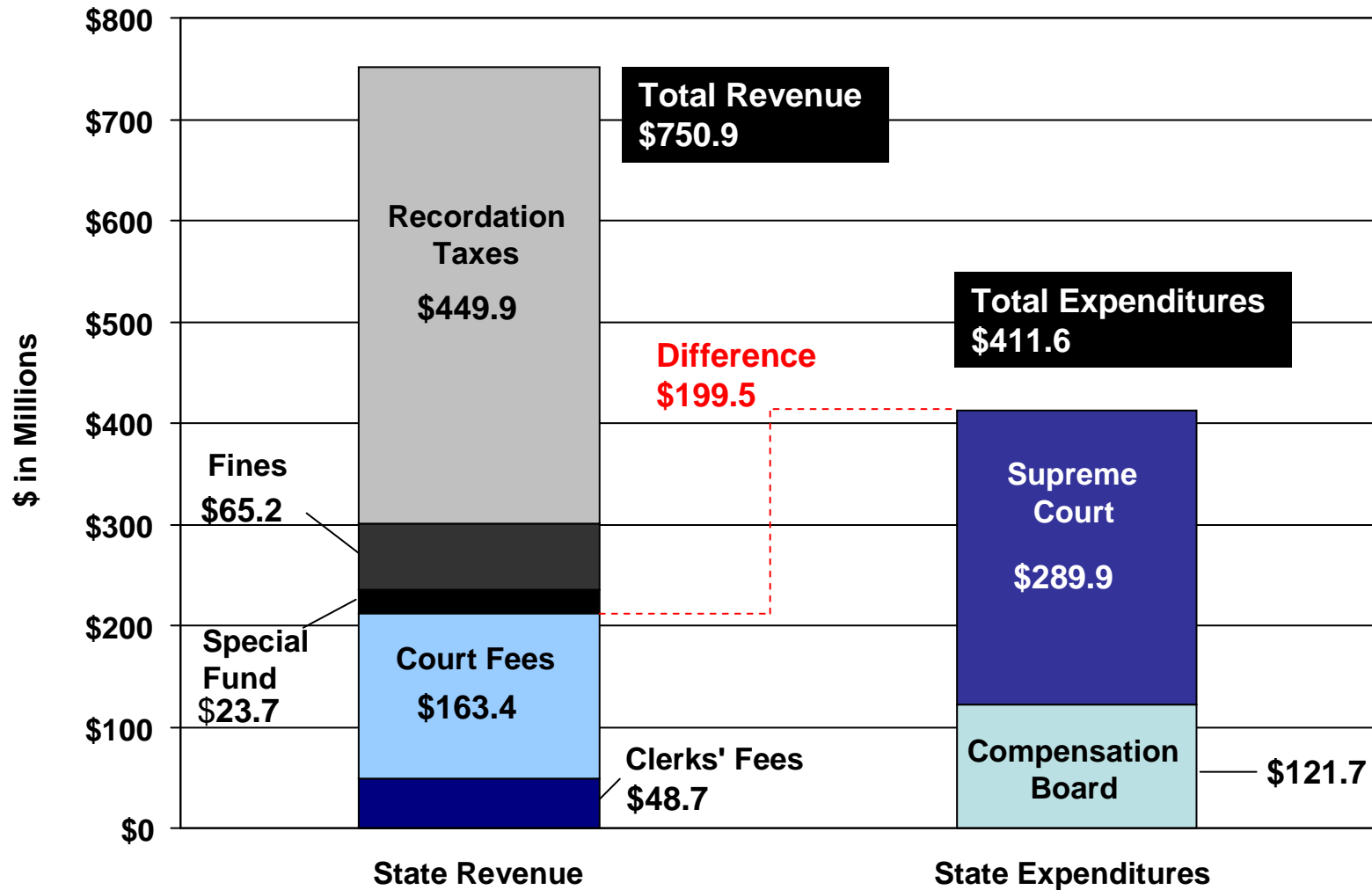
Court Funding Is Shared by State and Local Governments



Finding

- State spending on district and circuit court-related functions exceeds Commonwealth court fee revenue

State Spending for District and Circuit Courts Exceeds Court Fee Revenues (FY 2008)



Some Fees Could Potentially Recoup More Operating Costs

- Fees are set out in a variety of statutes for processes ranging from copying charges to fees assessed for felony convictions
- Fees do not necessarily reflect the cost of providing services
- Fees are not regularly or systematically adjusted to reflect changes in the costs of operating the court system

Examples of Court-Related Fees

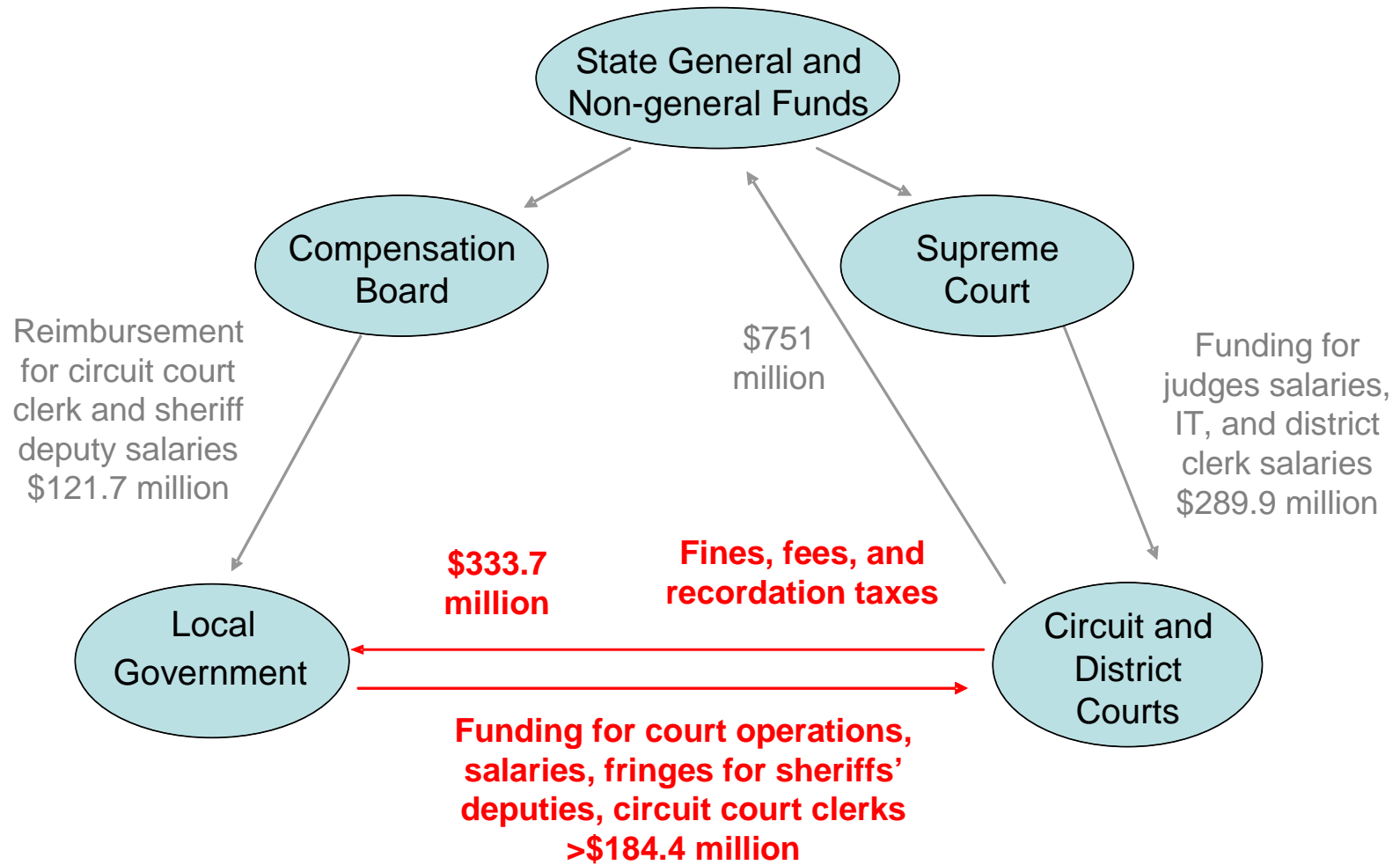
<u>Service</u>	<u>Fee</u>
Copying fee, per page	\$0.50
Issuing a writ	1.50
Indexing and preserving a will, including permanent storage	2.00
Annexing court seal to papers	2.00
Making a bond	3.00
Administering an oath	3.00
Fixed misdemeanor fee, per conviction	70.00
Filing fee, most civil cases	84.00
Fixed felony fee, per conviction	350.00

Recommendation

- 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.

Note: See “List of Recommendations” in written report for full text.

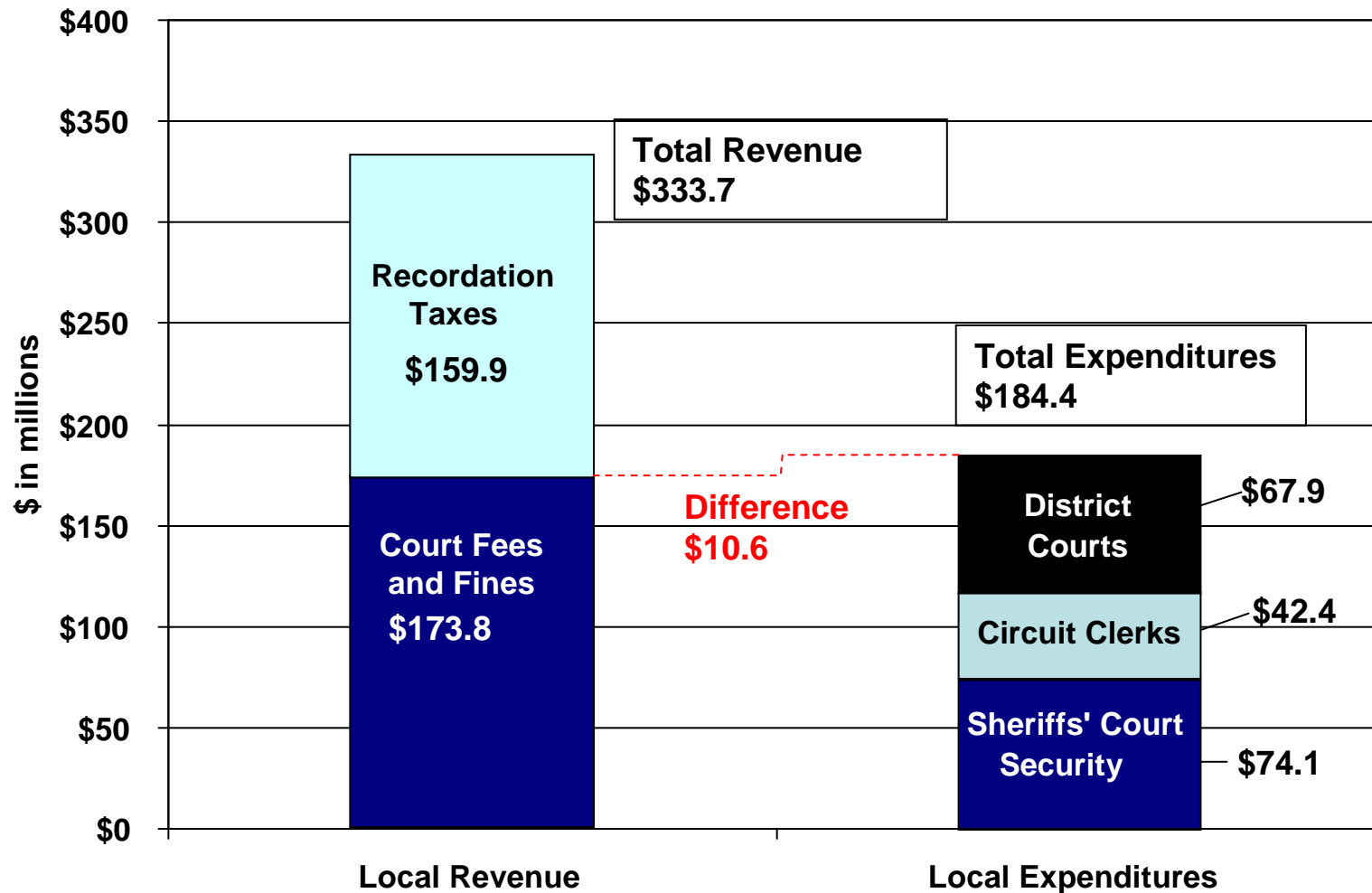
Localities Share Court Funding and Revenue with the State



Findings

- Localities spent at least \$10.6 million more on district and circuit court-related activities than they received in court fee and fine revenue
- 55% of localities paid more for courts than they received in court fee and fine revenue

Local Spending for District and Circuit Courts Exceeds Court Fee and Fine Revenues (FY 2008)



As an Executive Agency, the Compensation Board Is Subject to More Cuts Than Judiciary

- In FY 2002-2004 reductions, the budget for circuit court clerks was reduced by 11 percent, while cuts to district and circuit courts were less than one percent
- Return to pre-cut levels is slower for circuit court clerks. Between FY 2003 and FY 2008 budget growth for clerks was less than half the growth seen by district and circuit courts
- Localities taking a more significant role in supporting circuit court clerks
 - In FY 2000, 30 localities provided supplements
 - In FY 2008, 74 localities did so

The Difference Between Local Court Expenses and Revenues Varies by Locality (FY 2008, \$ in millions)

Top Five	Net Difference	Bottom Five	Net Difference
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: Net difference equals local expenditures minus fee and fine revenue collections

Key Findings

- Most localities are responsive to courthouse problems, although most court clerks cite deficiencies in their courthouses, including security concerns. No State money is provided for courthouse construction.
- Using a statutory process, circuit judges can compel localities to remedy court deficiencies, although the locality determines project details and costs.
- Court construction can be costly for localities. A new \$3 fee designated for this purpose may be unduly restrictive.
- Courts generate substantial revenue for the State and localities through fines, fees, and taxes. Excluding fines and taxes, the State spent nearly \$200 million more to operate courts than it received in FY 2008.
- Fine and fee revenue fell short of localities' court expenses by at least \$10.6 million, not including capital spending.

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