

Decision Package

[PDF](#)

Implement Magistrate Retention Plan	
Overview	
Agency	Magistrate System (103)
Biennium	2022-2024
Budget Round	Initial Bill
Bill Version	Regular Session
Category	Salary increases and regrades
DPB Initiated	No
Exclude from Bud Doc	No
Source of Request	Agency
Region	Multiple Regions
Approp. Act Language Required?	No
Legislation Required?	No
Enterprise Strategy	
Last Saved	10/1/2021 03:08 PM
Agency Narrative	
<p>Agency Description</p> <p>The Office of the Executive Secretary (OES) is experiencing difficulty in recruiting and retaining qualified individuals to serve as magistrates. The low salary range, demanding work schedules, and limited opportunities for advancement are contributing to this situation. While we cannot remove the need for round the clock service, increasing compensation for magistrates would recognize the demands of the position and allow our agency to be more competitive in recruiting and retaining qualified individuals.</p> <p>Magistrates are independent judicial officers who are called upon to make a variety of important decisions. Their work requires them to analyze complex scenarios and accurately apply the laws of the Commonwealth to the facts presented. Magistrates are on duty around the clock, including nights, weekends, and holidays. Throughout the pandemic, magistrates continued to report to their offices and provided uninterrupted service to the citizens of the Commonwealth.</p> <p>Magistrates are the first responders of the judicial system, working at the entry point of the criminal justice system. They issue criminal warrants, civil processes, and search warrants. Magistrates also issue Emergency Protective Orders and Emergency Substantial Risk Orders that can help to diffuse dangerous situations. In the field of mental health, magistrates are the only officials in the Commonwealth of Virginia with the authority to issue Emergency Custody Orders and Temporary Detention Orders for individuals experiencing a mental health crisis. Magistrates can also authorize medical treatment for individuals that are unable to consent to treatment on their own. By providing these vital services at all hours, magistrates play an important role in maintaining public safety and ensuring that the criminal justice system is accessible to those in need of service.</p> <p>In order to adequately perform their duties, magistrates must possess a strong understanding of Virginia law. To that end, new magistrates undergo extensive training that includes a 160 hour certification school, 240 hours of on the job training, and passage of a written certification examination. New magistrates must complete this rigorous training process before they are able to act independently. As a result, it takes three months to fill a vacant position with a certified magistrate capable of holding independent hearings.</p> <p>Once certified, veteran magistrates must obtain 20 hours of continuing education each year and attend various trainings to stay informed on new developments in the law. The additional information that they gain during these trainings, coupled with the knowledge and experience that they glean from their daily activities, is a valuable commodity that can only be gained over time. As a result, when a veteran magistrate leaves the system, we lose years of hard-earned experience that cannot be easily or quickly replaced.</p> <p>Despite the rigors of the position, new magistrates can only expect to earn a salary in the \$40,000 range. Not only is this below what many private sector positions earn, it is significantly below what many other state agencies offer. In addition, there are not many opportunities for advancement to higher paying positions within the magistrate system. Although there are 400 magistrate positions, these are all of equal rank and carry equivalent salary. This salary only increases when all state employees receive a raise. While magistrates may seek advancement within the magistrate system, there are only forty-seven other positions within the system. These include chief magistrates (which, by law, must now be members of the Virginia State Bar), regional supervisors, and magistrate advisors. As there are four hundred magistrates and only forty-eight additional positions, the chances for internal advancement are limited. The low starting salary and lack of opportunities for internal advancement are causing many magistrates to look for better paying positions outside of the magistrate system. As a result, we are experiencing high turnover and the loss of experienced magistrates.</p> <p>Research suggests that a "good" turnover rate for an organization is around 10%. In 2018 and 2019, 60% of our 32 districts had turnover rates at 18% or more while 35% experienced turnover rates at 30% or more. On a statewide level, between 7/1/18 and 6/30/20, we lost 146 of 400</p>	

magistrates, a turnover of 37%. This has caused a decline in the median experience of Virginia magistrates. In 2008, the median experience level of Virginia's magistrates was 8.3 years; by 2020, it had fallen to only 4.4 years.

The turnover problem is compounded by the difficulties we have in hiring qualified candidates to fill vacant positions. A recent vacancy in the eastern part of the Commonwealth was advertised for three weeks and only received 18 applications, some of which did not meet the minimum qualifications for the position. While several candidates were invited to interview, only two individuals appeared for the scheduled interviews and both of them withdrew from consideration after learning the salary. Another position in rural southern Virginia only received 3 total applications during the posting period. Of these, two were deemed unsuitable for interview.

Salary is often cited as a key reason for declined offers and early departures from the Magistrate System. Recently, several magistrates have left the system to join various prosecutor and public defender offices across the Commonwealth. Current job postings for open positions in these fields reflect salaries in the mid to upper \$50,000 range along with more standard working hours and the potential for advancement within the agency. Other magistrates have found better opportunities in non-attorney positions with other state agencies.

Recent events in Region 3 illustrate the magnitude of the problem. This region is comprised of four magisterial districts: the 6th, 10th, 11th, and 12th. The region stretches from Chesterfield County through the Petersburg-Hopewell area and down to the North Carolina border. In 2020 and 2021, the region lost a total of 16 magistrates. Of those, one went into the private practice of law, three became prosecutors, four joined various government agencies, and eight accepted offers of employment with the Virginia Employment Commission (VEC). Seven of the eight that joined the VEC were not attorneys, yet they all reported taking jobs that paid \$60,000 per year. In addition, they were able to leave the round-the-clock nature of magistrate work and enjoy a traditional Monday to Friday workweek.

In seeking to fill vacant positions, our agency often has applicants decline offers of employment, citing the higher salary that they currently earned in their present positions as their reason for doing so. Some of these were public sector workers, including law enforcement officers and probation officers, who declined our offer of employment because they would incur a significant pay cut. A quick review of some law enforcement agency starting salaries indicates that new officers can start in the \$44,000-\$47,000 range, so it is likely that an officer with some years of experience would earn significantly more. From our experience in Region 3, it also appears that state agencies like the VEC are able to offer significantly higher salaries to their workers than OES can offer to magistrates.

Private sector positions also seem to be outpacing magistrate salaries. Potential candidates employed at a variety of private sector positions have also reported earning more than they would receive as a magistrate. Those positions included a shift supervisor at a convenience store, an assistant manager at a grocery store, and a security guard at a construction site. Another applicant, who was retired from another line of work, indicated that he would lose money if he became a magistrate as his retirement income, which would be suspended if he resumed work, paid more each month than he would receive as a magistrate. While he was genuinely interested in the position, he was unwilling to incur a financial loss in order to become a magistrate.

As a result of low salaries, OES is experiencing significant difficulty in hiring and retaining qualified personnel. A significant salary increase is required to stem the tide of departing magistrates and attract qualified new candidates to vacant positions. This will ensure that the citizens of the Commonwealth will have timely access to necessary judicial services and will enjoy the public safety benefits that come from having a Magistrate System sufficiently staffed with knowledgeable and experienced magistrates.

Consequences of not funding/Justification

If OES is unable to improve magistrate compensation, it will continue to have difficulty in attracting qualified applicants to fill vacant positions. OES will also continue to experience high turnover rates as magistrates leave the agency for better paying positions in both the public and private sectors. This will result in increased workload on remaining magistrates, many of whom will have low levels of experience, and will have negative impacts on morale, scheduling, and overtime. OES will be mired in a perpetual cycle of hiring and training new magistrates and while continuing to lose more experienced magistrates. This will make it difficult to maintain a pool of experienced magistrates that have the knowledge and experience to assume positions of greater responsibility, like chief magistrate, when vacancies occur.

Alternatives considered (must list at least one)

"On December 11, 2007, OES submitted a report on the Magistrate System to the General Assembly in response to a requirement in the 2006 Appropriations Act. This report made a number of recommendations to improve the Magistrate System, including a significant salary increase. In justifying the salary increase, this report noted ""Given the significant judicial decisions that magistrates are called upon to make and in view of the recommended enhanced educational and professional qualifications, the Magistrate Study Group proposed, and the Supreme Court of Virginia recommends, increased compensation for magistrates..." The report went on to note ""Compensation should be increased to attract and retain qualified applicants for magistrate and chief magistrate positions."" While the legislature enacted many of the recommendations contained in this report during the 2008 session, the recommended salary increases did not occur. OES is now experiencing the difficulty in attracting and retaining qualified applicants that was warned of in the 2007 report.

There does not appear to be a viable alternative to accomplish the desired objective of attracting and retaining qualified personnel that does not involve a salary increase. The minimum requirements for magistrates are set by the Code of Virginia. In addition, the Code of Virginia also requires magistrates to be available around the clock as the need for magisterial services often occurs outside of normal business hours. Given the important decisions that magistrates make, the skills that are needed to understand the Code of Virginia and apply the law to presented facts, and the requirement that such services be available at all times, it does not seem feasible to seek statutory changes that would lower these minimum standards in order to attract a broader pool of candidates or allow for reduced hours of service to law enforcement and the general public. As the qualifications and work hours cannot be changed, OES must be able to offer sufficient compensation to attract and retain qualified candidates that can provide these important services at all hours. "

Explanations and Methodologies

OES reviewed internal records to calculate the amount of turnover in magistrate positions. Numerous factors were considered in determining an appropriate salary increase. The minimum salary recommendation cited in the December 11, 2007 report was \$48,440. Adjusted for inflation to 2021 dollars, that amount rises to \$60,083. Where available, OES also considered information on the jobs that magistrates were taking when they left the system. That information indicates that magistrates are leaving the system for jobs paying in the \$55,000 to \$60,000 range. As many of these jobs are also in the public sector and offer a standard Monday-Friday workweek, the around the clock nature of magistrate office operations supports a higher number. In calculating the cost of this proposal, OES calculated the cost of increasing current employee salaries to a base level of \$54,000.00, factoring in the increased cost of benefits. For currently approved but vacant positions, an assumed salary of \$44,000.00 was used in the calculation. We also want to recognize the years of experience of veteran magistrates that have been in the system for some time by provided additional funding based on years of service. Magistrates with 2-4 years of experience would receive \$55,000; magistrates with 4-6 years

of experience would receive \$55,500; those with 6-8 years would receive \$56,000; 8-10 years would receive \$56,500 and those with 10 or more years would receive \$57,000.

Summary Grid

Object Type	FY 2023 Req	FY 2024 Req	FY 2025 Req	FY 2026 Req	FY 2027 Req	FY 2028 Req
General Fund Dollars	\$3,700,643	\$3,700,643	\$3,700,643	\$3,700,643	\$3,700,643	\$3,700,643
Nongeneral Fund Dollars	\$0	\$0	\$0	\$0	\$0	\$0
General Fund Positions	0.00	0.00	0.00	0.00	0.00	0.00
Nongeneral Fund Positions	0.00	0.00	0.00	0.00	0.00	0.00
General Fund Transfers	\$0	\$0	\$0	\$0	\$0	\$0
General Fund Revenue	\$0	\$0	\$0	\$0	\$0	\$0
Layoffs	0	0	0	0	0	0
Additions to Balance	\$0	\$0	\$0	\$0	\$0	\$0

Total Service Grid Summarized By Program and Fund Detail

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Program Code	Program Name	FY 2023 Req	FY 2024 Req
321	Pre-Trial, Trial, and Appellate Processes	\$3,700,643	\$3,700,643
Totals		\$3,700,643	\$3,700,643

Fund Code	Fund Name	FY 2023 Req	FY 2024 Req
01000	General Fund	\$3,700,643	\$3,700,643
Totals		\$3,700,643	\$3,700,643

Position Planning Grid Summarized By Program

[More Details](#)

Program Code	Program Name	FY 2023 Req	FY 2024 Req
321	Pre-Trial, Trial, and Appellate Processes	0.00	0.00
Totals		0.00	0.00

Supporting Documents

File Name	File Size	Uploaded By	Upload Date	Comment