

Gavel to Gavel

A review of state legislation affecting the courts

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Focus: Federal offset program and state courts

As the ongoing fiscal crisis pressures courts to come up with new ways to generate revenue, one idea that has gained a great deal of traction is a relatively old one: debt collection. In particular, several states have adopted resolutions encouraging passage of federal legislation allowing for court debt to be collected through the [U.S. Treasury's Offset Program](#) (TOP) which is used to collect delinquent debts owed to federal agencies and states (including past-due child support).

Arkansas' [HCR 1010 of 2009](#) requested the creation of a court fee intercept program, noting that the "collection of court-imposed penalties, fines, fees, and restitution surcharges through a tax refund offset mechanism will contribute positively to the public trust and confidence in the judicial system."

Oregon's [SJM 12 of 2009](#) used much of the same language of the Arkansas legislation.

New Mexico's [HJM 73 of 2009](#) went into even greater detail as to the fees and debts owned, noting that "more than nine thousand individuals have outstanding fines and fees ordered by a court in New Mexico,

which fines and fees total just under two million five hundred twenty-one thousand dollars (\$2,521,000)." Moreover, New Mexico's own state-level version, a tax refund intercept program, had already collected nearly \$150,000 in unpaid fees and fines (as of February 2009). The resolution estimates that participation in the federal program would "conservatively" result in \$300,000 in collections for the judicial branch of the state.

All three resolutions were approved by both chambers of their respective legislatures unanimously.

Jurisdiction: Newly Introduced

[Florida SB 1962](#) Enacts "American and Florida Laws for Florida Courts Act." Declares choice of foreign law provisions void if the foreign law would not grant the parties the same fundamental liberties, rights, and privileges granted under the United States and Florida Constitutions. Provides that certain child custody orders violate the public policy of Florida. In Senate Judiciary Committee.

[Oklahoma HB 2304](#) Increases small claims jurisdiction from \$6,000 to \$10,000. In House Judiciary Committee.

[Oklahoma SB 1286](#) Increases small claims



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jurisdiction from \$6,000 to \$10,000. In Senate Judiciary Committee.

Jurisdiction: Floor and Committee Activity

[Indiana HB 1186](#) Allows a city or town that has not established a city or town court or an ordinance violations bureau to enter into an interlocal agreement with a city, town, or other municipal corporation that has established: (1) a city or town court; or (2) an ordinance violations bureau; to hear and dispose of ordinance violations that would otherwise come under the jurisdiction of a city or town court or an ordinance violations bureau established by the city or town. Approved by Senate Committee on Judiciary 2/18/10.

[Maryland HB 769](#) Provides that an orphans' court may exercise jurisdiction over guardianship of the person of a minor regardless of whether the presiding judge of the orphans' court is a member of the Bar of Maryland. Approved by Senate Judiciary Committee 2/17/10.

[Virginia SB 651](#) ORIGINAL: Increases small claims jurisdiction from \$5,000 to \$10,000. Requires limit be adjusted July 1, 2015 and every five years thereafter based on Consumer Price Index. AS AMENDED: Eliminates automatic CPI adjustments. Approved by full Senate 2/16/10.

Qualifications and Terms: Newly Introduced

[Oklahoma HB 3013](#) Requires judicial and other candidates prove U.S. citizenship

when filing for election. In House Rules Committee.

[South Carolina SB 1186](#) Prohibits legislators from being eligible to be elected by the legislature to a judgeship for 20 years after service (currently 1 year). In Senate Committee on Judiciary.

Qualifications and Terms: Floor and Committee Activity

[Arizona SCR 1040 \(Constitutional Amendment\)](#) Increases mandatory retirement age for judges from 70 to 75. Approved by Senate Judiciary Committee 2/15/10.

[Indiana HB 1061](#) AS AMENDED: Provides that an individual elected to the office of circuit court clerk after November 2, 2010, must complete at least 15 hours of training courses within one year, and 40 hours of training courses within three years after beginning the individual's term as circuit court clerk. Training courses to be developed by the Association of Indiana Counties and approved by the State Board of Accounts. Approved by full Senate 2/18/10. Returned to House for transmission to Governor.

[Oregon SJR 48 \(Constitutional Amendment\)](#) Provides a person serving as a judge shall be eligible to be employed by the State Board of Higher Education or a school board for the purpose of teaching, and employment by the State Board of Higher Education or a school board for the purpose of teaching shall not prevent the person from serving as a judge. Approved as amended by Senate Rules Committee 2/18/10.

[Virginia HB 241](#) AS AMENDED: Requires the General Assembly to approve retired judges for service under temporary recall. Permits chief judge of the Court of Appeals, and the chief judges of the various circuit courts to recall retired judges back into temporary service (currently, only chief justice may do so). Approved full House 2/16/10.

[West Virginia HB 4292](#) AMENDED: Requires magistrates have at least a bachelors degree or two years experience as a magistrate. Provides that currently serving magistrates may remain in office. Permits Supreme Court Administrator to waive mandatory educational instruction requirements for magistrates. Eliminates distinctions between qualifications for magistrates serving populations or more or less than 5,000. Approved as amended by House Judiciary Committee 2/19/10.

[Wyoming HB 37](#) Repeals mandatory retirement age for judges and justices. Effective only on condition constitutional amendment approved at 2010 general election. Approved by full House 2/16/10.

Rule Making Authority: Newly Introduced

[Florida SB 2208](#) Authorizes chief judge of a circuit court to designate court administrator to perform duties relating to jury system management & operation. In Senate Judiciary Committee.

Rule Making Authority: Floor and Committee Activity

[Florida HB 13](#) Provides for chief judge of judicial circuit, subject to approval by Chief Justice of Supreme Court, to establish program for retired justices or judges to preside over civil cases & trials upon written request of one or more parties. Approved by Civil Justice & Courts Policy Committee 2/17/10.

[Kansas SB 519](#) Authorizes, upon the appropriate Supreme Court rule, an electronic signature of the Clerk of the District Court that would have the same legal effect as a manual signature on records and judicial proceedings requiring the attestation of the Clerk. Eliminates the requirement that certain docket fees must be paid by mail or in person. Approved by full Senate 2/18/10.

Salary and Budget: Newly Introduced

[Florida SB 1994](#) Grants Legislative Budget Commission power to review and approve or disapprove the budget of the Florida Clerks of Court Operations Corporation and the total combined budgets of the clerks of court. Requires Florida Clerks of Court Operations Corporation create of uniform system of workload performance measures (currently, reads only “performance measures”). Prohibits expenditures by clerks for court-related functions not specified in law or court rule. In Senate Judiciary Committee.

[Idaho HB 524](#) Creates an emergency \$25 surcharge on criminal convictions for Judicial Branch operations. In House Judiciary Committee.

[Illinois SB 3408](#) Requires Judges Retirement System automatically enroll its newly eligible employees in a self-managed program of retirement benefits instead of the program of retirement benefits currently offered and allows currently eligible employees to elect to participate in the self-managed program. In Senate Assignments Committee.

[Illinois SB 3409](#) Requires Judges Retirement System automatically enroll its newly eligible employees in a self-managed program of retirement benefits instead of the program of retirement benefits currently offered and allows currently eligible employees to elect to participate in the self-managed program. In Senate Assignments Committee.

[Kentucky HB 441](#) Requires that construction management fees for courthouse construction be determined by competitive bidding. In House Judiciary Committee.

[Kentucky SJR 141](#) Requires all elected persons within the legislative and judicial branches to reduce their salaries by ten percent. In Senate State & Local Government Committee.

[Missouri HJR 96 \(Constitutional Amendment\)](#) Requires three separate salary recommendations by the Missouri Citizens' Commission on Compensation 1) judges except municipal court judges 2) General

Assembly 3) other elected officials. In House (no committee).

[South Carolina HB 4595](#) Increases motions fees from \$25 to \$75. Creates second additional \$150 fee on all civil actions. In House Committee on Ways and Means.

Salary and Budget: Floor and Committee Activity

[Georgia SB 389](#) Requires judicial branch report to Auditor and post on website all expenditures, including federal pass-through moneys. Approved by Senate Committee on State and Local Governmental Operations 2/18/10.

[Iowa SB 2062](#) Creates retirement incentive program for non-judicial state employees. Authorizes, but does not require, Supreme Court provide a similar retirement incentive program. Signed into law by Governor 2/10/10.

[Kansas HB 2476](#) Extends various fees set to expire in 2010 to 2011. Approved by full Senate 2/18/10. To House to concur in Senate amendments.

[Maryland HJR 4](#) Sets judicial salaries for 2011-2013. Approved as amended by House Appropriations Committee 2/19/10.

[Maryland SJR 4](#) Sets judicial salaries for 2011-2013. Approved by full Senate 2/16/10.

[New Hampshire HB 1512](#) Allows judges who resign from office to elect to receive a deferred retirement benefit under the judicial

retirement plan. Approved by House Finance Committee 2/18/10

[New Hampshire SB 357](#) Authorizes the judicial retirement plan to deduct a health insurance premium contribution from allowances. Approved by full Senate 2/17/10.

[New Mexico SB 226](#) Creates magistrate courts operations fund in the state treasury for appropriation by the legislature for the operations of magistrate and metropolitan courts. Creates temporary new magistrate court operations fee of \$4.00, to be credited to the magistrate courts operations fund. Specifies other fees to go towards magistrate courts operations fund. Requires any balances in the fund at the end of FY2014 revert to the General Fund. Approved by full House 2/17/10. To Governor for approval.

[Oklahoma SB 1889](#) Requires all judges be a member of the Uniform Retirement System for Justices and Judges (currently, must be judge at least 8 years). Approved as amended by Senate Retirement and Insurance Committee 2/16/10.

[South Dakota HB 1081](#) Increases unified judicial system court automation surcharge for various filings and fines. Approved by Senate Judiciary Committee 2/18/10.

[Utah SB 232](#) Allows a judicial hiring freeze to be implemented during a General Fund deficit for the juvenile court, district court, appellate court, or any combination of these courts. Specifies that a judicial hiring freeze shall be established for a specified period of time. Approved by Senate Judiciary, Law

Enforcement, and Criminal Justice Committee 2/16/10.

Selection: Newly Introduced

[Georgia HB 1172](#) Provides that if the General Assembly has not provided by local law for a clerk of the magistrate court, the clerk of the superior court shall serve in such capacity. Provides superior court clerk may not opt out of serving as clerk of the magistrate's court. In House Committee on Judiciary.

[Illinois SB 3108](#) Provides for the election of Supreme, Appellate, and Circuit Court judges, State's Attorneys, and sheriffs in non-partisan elections. In Senate Assignments Committee.

Selection: Floor and Committee Activity

[Alabama HB 443](#) AMENDED: Creates judicial vacancy commissions for the filling of judicial office vacancies, except those judicial circuits having judicial vacancy commissions provided by local constitutional amendments to the Constitution. Provides that if a local constitutional amendment creating a judicial vacancy commission is repealed, the county would be subject to the statewide judicial vacancy process in this amendment. Increase the maximum age at which a person may be elected or appointed to a judicial office from 70 to 72. Approved as amended by House Judiciary Committee 2/11/10.

[Arizona SCR 1002 \(Constitutional Amendment\)](#) ORIGINAL: Ends merit selection system. Allows governor to fill

judicial vacancies subject to senate confirmation. Subjects all judges to yes/no retention elections and senate reconfirmation every 4 years. AMENDED: Removes the requirement that a judicial nominee be reconfirmed by the Senate every four years. Approved by Senate Judiciary Committee 2/15/10.

[Arizona SCR 1049 \(Constitutional Amendment\)](#) ORIGINAL: Provides Supreme Court to name presiding judge of Superior Court only in counties above 800,000 people (currently, Supreme Court names all presiding judges). Presiding judges in counties below 800,000 to be elected by county electors. Requires Superior Court judges be elected by county electors in counties over 800,000. Provides vacancies to be filled by County Board of Supervisors (currently Governor fills). Retains merit selection commission for appellate courts, but requires all applicants be submitted to governor in rank order based on merit. Provides appellate judges will remain subject to yes/no retention votes. Includes judicial races in state's public financing program. Sets spending limits for Superior Court candidates as equal to that for a candidate for the legislature and for presiding judge the same as Mine Inspector. Requires publicity pamphlet be created and distributed prior to elections and that all statements and comments filed with the secretary of state under 300 words be included. AS AMENDED: Increases the county population threshold from 250,000 to 800,000 for filling judicial vacancies by merit selection. Removes provisions requiring certain seats on nominating commissions be held by attorneys vs. non-

attorneys. Approved as amended by Senate Judiciary Committee 2/15/10.

[Iowa SF 2343](#) Authorizes the Chief Justice to delay the filling of any judicial office. (Currently has authority, but set to lapse in June 2010). Authorizes Chief Justice to apportion new vacancies in judicial officers from one judicial election district to another. Allows Clerk of District Court be appointed solely by Chief Judge and removed by Chief Judge after consulting other judges (currently, may only be appointed or removed by majority vote of judges). Specifies Chief Judge has power to designate time and location for court to ensure magistrate available. Requires associated district judges reside in judicial election district at time of appoint and through entire term in office. Requires state court administrator consider case-related workload in apportion magistrates in state. Removes requirement that each county have at least one magistrate. Permits magistrate reside in a county that borders one for which he or she serves and to serve outside their normally appointed county. Requires full-time magistrates stand for retention election every six years and be an attorney. Requires majority vote of district judges before a full time magistrate can replace two part-time ones. Provides that the district judicial nominating commission shall nominate persons for appointment to the office of district associate judge, associate juvenile judge, or associate probate judge, rather than the county magistrate appointing commission. Requires person so to be a resident of the judicial election district rather than just the county where the vacancy occurs. Requires district judicial nominating provide 3 names within 60 days of notice of

vacancy to the longest serving district judge in the judicial election district for selection, rather than the chief judge of the judicial district. Requires the district judges of the judicial election district where the vacancy occurs select someone within 30 days or else the chief justice of the supreme court shall make the appointment. Allows chief justice to move a vacancy that occurs in the office of district judge, district associate judge, associate juvenile judge, or associate probate judge, from one judicial election district to another if a substantial disparity exists in the allocation of judgeships and judicial workload between judicial election districts as determined by the judicial council. Permits chief judge of each judicial district, rather than a majority vote of all the district judges, to appoint the clerk of the district court and remove the clerk for cause after consultation with the judicial officers of the judicial district. Provides that a senior judge shall cease being a senior judge upon attaining the age of 78 years of age, unless the senior judge is reappointed by the supreme court for two additional one-year terms until the age of 80 is attained. Requires magistrates be attorneys, but allows existing magistrates to continue to serve and be reappointed. Approved by Senate Judiciary Committee 2/15/10.

[New Hampshire HB 1307](#) Requires the executive council to hold a public hearing prior to its confirmation of the appointment of a marital master. Requires the governor and council to review the performance of a marital master and hold a public hearing prior to his or her reappointment. Clarifies that reappointed marital masters shall serve for 3-year terms. Rejected by House Judiciary Committee 2/17/10.

[Utah SB 210](#) Eliminates witnesses who have testified in cases considered by the judge from the list of mandatory survey respondent groups. Expands the survey topic of “judicial temperament” to include questions about judicial demeanor and personal attributes that promote trust and confidence in the judiciary. Approved by Senate Judiciary, Law Enforcement, and Criminal Justice Committee 2/19/10.

[West Virginia HB 4036](#) Creates Judicial Vacancy Advisory Commission to assist the Governor in filling judicial vacancies. Commission to submit names to Governor, but recommendations are advisory only. Approved by House Judiciary Committee 2/19/10.

[West Virginia SB 399](#) Requires magistrates be elected in districts rather than countywide. Approved by Senate Judiciary Committee 2/17/10.

[West Virginia SB 402](#) Requires Supreme Court justices be elected by divisions. Provides the unexpired term to be filled in 2010 is division one; (2) the second open seat to be filled in 2012 is division two; (3) the open seat to be filled in 2016 is division three; and (4) of the two seats to be filled in 2020 one will be division four and one will be division five. Provides the chief justice shall draw lots to determine which seat will be in division four and which will be in division five. Approved by Senate Judiciary Committee 2/17/10.

Structure Changes: Newly Introduced

[Georgia SB 429](#) Increases Supreme Court from 7 to 9 justices. Increases Court of Appeals from 12 to 15. Creates \$100 judicial operations fund fee to all civil actions with the proceeds to be deposited into the general fund of the state treasury for funding salaries of judges and the operational needs of the judicial system. In Senate Committee on Judiciary.

[Oklahoma HB 3165](#) Authorizes courts to establish a youth gang court pilot program. In House Appropriations Committee.

[West Virginia SB 589](#) Creates an Intermediate Court of Appeals. In Senate Judiciary Committee.

Structure Changes: Floor and Committee Activity

[Indiana HB 1271](#) Provides that certain courts may establish a problem solving court for alternative treatment and rehabilitation. Requires the board of directors of the judicial center to adopt rules for the certification and operation of problem solving courts. Approved by Senate Committee on Judiciary 2/18/10.

[New Mexico HB 229](#) AS AMENDED: Requires creation of “metropolitan courts” in counties with a population of more than 250,000 (currently 200,000). Approved by full Senate 2/16/10. To Governor for approval.

[West Virginia HB 4352](#) ORIGINAL: Authorizes the West Virginia Supreme Court of Appeals to create a Business Court Division within circuits courts of judicial district with a population above 75,000.

AMENDED: Same, but drops threshold to 60,000 population. Approved by House Judiciary Committee 2/19/10.

Other: Newly Introduced

[Indiana HB 2442](#) Requires the department of administrative services and any other state agency that maintains a separate accounting system and elects to establish a debt collection setoff procedure, to remit to the state court administrator, 10 percent of the amounts set off from the collection of delinquent court debt for use by the judicial branch to defray the costs of collecting unpaid court debt. Requires Supreme Court prescribe rules regarding the retention of all judicial branch records. Requires Supreme Court appoint administrator of the board of examiners of shorthand reporters. Transfers the authority to set fees for examination and admission to practice law in Iowa from the board of law examiners to the supreme court and provides the fees are to be appropriated to the supreme court directly to offset the costs of the examinations and admissions. Separates authority of Supreme Court to set mileage for jurors from provision for setting mileage for witnesses, court employees, and judges. In House (no committee).

[Maryland HB 625](#) Requires the Administrative Office of the Courts maintain a Domestic Violence Central Repository. In House Judiciary Committee.

[Maryland HB 639](#) Creates Task Force on Military Service Members, Veterans, and the Courts. In House Judiciary Committee.

[South Carolina HB 4458](#) Creates Judicial and Criminal Justice Systems and Relevant

Laws Commission. In House Judiciary Committee.

[Tennessee HB 3946](#) Reduces from 10 to eight the number of members who are appointed to serve on a special joint committee to make recommendations concerning removal of judges based on charges affirmed by the Supreme Court. In House Judiciary Committee.

[Tennessee SB 3946](#) Reduces from 10 to eight the number of members who are appointed to serve on a special joint committee to make recommendations concerning removal of judges based on charges affirmed by the Supreme Court. In Senate Judiciary Committee.

[West Virginia SB 3117](#) Requires a total of four part-time deputy magistrate court clerks to be employed to assist with the workload of each magistrate court clerk. In House Judiciary Committee.

Other: Floor and Committee Activity

[Alabama SB 147](#) Continues until 2012 Board of Court Reporting. Grants power to name a board member to Chief Justice based on list of names submitted by Administrative Office of Courts (currently, state's Judicial Conference submits names). Approved as amended by House Boards and Commissions Committee 2/17/10.

[Georgia HB 1002](#) Increases the punishment for certain crimes committed upon judges, prosecuting attorneys, public defenders, clerks and deputy clerks of court, court reporters, and probation officers. Approved

by House Committee on Judiciary Non-Civil 2/17/10.

[Indiana HB 1044](#) Provides that circuit court clerks and the clerk of the Supreme Court are not personally liable for acts or omissions in the performance of the clerks' duties absent gross negligence or intentional disregard of the responsibilities of the office of clerk. Specifies that the fact that a clerk is not personally liable does not preclude an action against the clerk's bond based on an error or omission committed by the clerk. Approved as amended by Senate Committee on Corrections, Criminal, and Civil Matters 2/16/10.

[Iowa SB 2345](#) Requires the department of administrative services and any other state agency that maintains a separate accounting system and elects to establish a debt collection setoff procedure, to remit to the state court administrator, 10 percent of the amounts set off from the collection of delinquent court debt for use by the judicial branch to defray the costs of collecting unpaid court debt. Requires Supreme Court prescribe rules regarding the retention of all judicial branch records. Requires Supreme Court appoint administrator of the board of examiners of shorthand reporters. Transfers the authority to set fees for examination and admission to practice law in Iowa from the board of law examiners to the supreme court and provides the fees are to be appropriated to the supreme court directly to offset the costs of the examinations and admissions. Separates authority of Supreme Court to set mileage for jurors from provision for setting mileage for witnesses, court employees, and judges. Approved by Senate Judiciary Committee 2/15/10.

[Kansas HCR 5026](#) Requests Supreme Court, with Judicial Council, survey court system and appoint advisory committee to examine (1) unification and restructuring of the courts; (2) administrative supervision of the courts; (3) selection, tenure, compensation and retirement of judges and court personnel; (4) appellate review; (5) financing of courts; and (6) such other areas assigned to it by the chief justice. Approved by full House 2/19/10.

[New Hampshire HB 1343](#) Declares, in part, that any “Judicial Order by the Judiciaries of the United States of America which assumes a power not delegated to the government of United States of America by the Constitution for the United States of America and which serves to diminish the liberty of the any of the several States or their citizens shall constitute a nullification of the Constitution for the United States of America by the government of the United States of America.” Specifies acts which would cause “nullification” and that in the event such an act takes place, “all powers previously delegated to the United States of America by the Constitution for the United States shall revert to the several States individually.” Rejected by House Judiciary Committee 2/18/10.

[New Hampshire HB 1423](#) Requires performance audit of the judicial branch family division. Rejected by House Judiciary Committee 2/17/10.

[Wyoming SB 68](#) Includes in definition of “peace officer” court security officers. Approved as amended by Senate Judiciary

Committee 2/17/09. Approved by Senate Committee of the Whole 2/19/10.

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