

# Gavel to Gavel

A review of state legislation affecting the courts

December 2009

Year in Review Edition

## *End of Year Review*

As 2009 winds down, a review of the over 1000 pieces of legislation tracked by *Gavel to Gavel* this year seems in order. The bills and resolutions presented below represents a sample of the legislation that advanced through the legislatures this year, either into law or in some cases into a gubernatorial veto.

## Selection

[Arkansas HB 1263](#) Provides that should a vacancy occur in the office of County Court judge during a declared emergency, the office is to be temporarily filled based on a list previously prepared by the county judge designating 3 people, in order of succession. Signed into law by Governor 3/9/09.

[Illinois SB 1466](#) Sets contribution limits for campaigns: \$125,000 for Supreme or Appellate Court or Circuit Court (First Judicial District only); \$75,000 for Supreme or Appellate Court or Circuit Court (all other Judicial Districts). Signed into law by Governor 12/9/09.

[Indiana HB 1491](#) ORIGINAL: Eliminates merit selection system for election of Superior Court judges in St. Joseph County and replaces with nonpartisan elections.

**HOUSE FLOOR AMENDED:** Same, but puts in campaign contributions limits for St. Joseph County Superior Court race: \$500 per person, \$1000 per law firm, \$10,000 total from all sources. **SENATE COMMITTEE AMENDED:** Same, but creates a Sixth District of the Court of Appeals with 3 judges to be selected via existing merit selection system. Sixth District to sit in Indianapolis and have statewide jurisdiction. Governor vetoed 5/13/09.

[Iowa SB 478](#) Transfers responsibility for maintaining elections and vacancies in judicial nominating commission to state court administrator rather than clerk of Supreme Court. Signed into law by Governor 5/26/09.

[Kansas HB 2111](#) ORIGINAL: Deletes 2010 sunset date for commission on judicial performance. AMENDED: Replaces 2010 sunset date with 2013. Signed into law by Governor 4/13/09.

[Nevada SJR 2 \(Constitutional Amendment\)](#) Creates merit selection system for justices of the Supreme Court, Court of Appeals (if created) and judges of the District Court. Creates nominating commission to submit 3 names to governor for selection. Requires judge or justices receive 55 percent or more of the votes cast to be retained. Provides



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Chief Justice will be the longest serving member of the Supreme Court. Approved by House 5/20/09. To Secretary of State for placement on ballot.

[North Carolina HB 907](#) Provides that matching funds from the state's public financing system for judicial races are available as a result of a communication that supports or opposes all candidates for the same office. Signed into law by Governor 8/28/09.

[Oklahoma HJR 1041 \(Constitutional Amendment\)](#) ORIGINAL: Requires Senate confirmation of all judicial officers. AMENDED: Requires Senate confirmation of Workers Compensation judges only. Conference report approved by House and Senate 5/20/09. To Secretary of State for placement on ballot.

[Oklahoma SJR 27 \(Constitutional Amendment\)](#) Allows the President Pro Tempore of the Senate and the Speaker of the House of Representatives to each select one member of the Judicial Nominating Commission. Conference report approved by House and Senate 5/19/09. To Secretary of State for placement on ballot.

[Rhode Island SB 760](#) Makes any individual whose name was publicly submitted to the governor by the judicial nominating commission eligible for subsequent nomination by the governor until June 30, 2010. Became law without Governor's signature 7/8/09.

[Texas HB 4060](#) Alters contribution period for support or opposition of state judicial candidates or officeholders. Signed into law by Governor 6/19/09.

[Texas SB 1152](#) Prohibits a political contribution from being offered or accepted in Texas courthouses. Signed into law by Governor 6/19/09.

[Wisconsin SB 40](#) AMENDED: Creates the Democracy Trust Fund from which eligible candidates for the Office of Justice of the Supreme Court may receive public financing derived from general purpose revenues and from an expanded income tax check-off. Requires eligible candidate not accept private contributions other than seed money contributions and qualifying contributions, not accept more than \$25 in cash from any contributor or accept cash from all sources in a total amount greater than .1% of the public financing benefit or \$500, whichever is greater and not make any disbursement derived from personal funds after the close of the public financing qualifying period. Grants eligible candidate in \$100,000 for a primary election campaign and \$300,000 for a general election campaign. Makes amounts subject to a biennial cost of living adjustment. Provides for rescue and other funds where an opposing candidate does not participate in public financing or where independent expenditures exceed 120% of the public funding given to the candidate. Signed into law with partial veto by Governor 12/1/09.

## Qualifications and Terms

[Alabama HB 421](#) Requires mandatory education and mandatory continuing education for municipal court clerks and municipal magistrates who have become educationally certified under guidelines approved by the Administrative Director of Courts and the Administrative Office of

Courts. Signed into law by Governor 5/15/09.

[Alabama SB 28](#) Requires that persons elected or appointed to serve on the Supreme Court, Court of Civil Appeals, and Court of Criminal Appeals have a combined total of 10 years or more of licensure to practice law. Requires persons serving as a Circuit Court judge have a combined total of five years of licensure to practice law. Requires persons serving as a District Court judge have a combined total of three years of licensure to practice law. Signed into law by Governor 5/15/09.

[Georgia SB 199](#) ORIGINAL: Suspends for 2009 the otherwise required annual training for magistrates and probate judges. AMENDED: Suspends for 2009 and 2010 required annual training for magistrates and probate judges. Signed into law by Governor 5/4/09.

[Kansas SB 68](#) Allows judges reaching 75 years of age to finish serving their current term. Signed into law by Governor 4/20/09.

[Louisiana HCR 76](#) Requests that the attorney general study the training requirements of justices of the peace over the age of 70. Approved by full Senate 6/17/09. Does not require Governor's approval.

[New Hampshire HB 655](#) AS AMENDED: Allows judges over 70 years of age to serve as senior active status justices. Vetoed by Governor 7/31/09. Veto sustained 10/28/09.

[Texas HB 1793](#) Requires a judge who hears the cases of children charged with certain misdemeanor offenses punishable by fine

only to annually complete two hours of training specifically related to child welfare and the federal Individuals with Disabilities Education Act. Signed into law by Governor 5/29/09.

[Texas SB 420](#) Prohibits a political subdivision or agency of the state from establishing or maintaining, formally or informally, a plan to evaluate, promote, compensate, or discipline certain judges based on the amount of money collected by that judge from traffic offenses. Currently, the law does permit municipalities to consider the amount of money collected from a municipal court or a municipal court of record when evaluating the performance of a judge employed by that municipality. Signed into law by Governor 6/19/09.

## Rule Making Authority

[Arkansas HB 1033](#) Repeals Reporter of the Supreme Court's power to omit decisions from publication. Repeals requirement that published volumes of Supreme Court and Court of Appeals decisions be delivered to state and local officials and permits destruction of published volumes if available electronically. Requires all opinions be available free online. Permits Reporter of the Supreme Court to oversee publication and distribution of the decisions of the Supreme Court and the Court of Appeals in such format and medium as the Supreme Court may direct. Signed into law by Governor.

[Arkansas SB 33](#) Amends Supreme Court Rule 5-2. Requires that, except for an order affirmed without an opinion, all opinions (published or "unpublished") are precedent and may be relied upon and cited by any

party in any proceeding. Specifies that whether an opinion is included in the Arkansas Reports or Arkansas Appellate Reports shall have no effect on its precedential value. Signed into law by Governor 2/16/09.

[Delaware SB 25](#) Provides for the operation of the courts in the event of an emergency. Grants the Chief Justice the authority to declare a judicial emergency when there are emergency circumstances affecting one or more court facilities with such order limited to an initial duration of 30 days but renewable for 30 day periods. Allows Chief Justice to order the conducting of courts outside their normal county, extend statutes of limitations, etc. Signed into law by Governor 5/19/09.

[New York AB 6921](#) Permits the Governor or the Chief Judge of the Court of Appeals or the Presiding Justice of the intermediate appellate courts to temporarily relocate court terms where there are circumstances or the threat thereof which prevent the safe and practical holding of any term. Signed into law by Governor 7/28/09.

[Oklahoma SB 1115](#) Requires local rules and administrative orders of a District Court not conflict with any statutes or any rules of a Superior Court. Requires such local rules be in writing and published on the Oklahoma Supreme Court Network to be valid and enforceable. Signed into law by Governor.

[Texas HB 1861](#) ORIGINAL: Grants authority to the Supreme Court of Texas and the Texas Court of Criminal Appeals to extend the statute of limitations and certain other legal deadlines in a county in which a disaster has occurred. AMENDED:

Authorizes the Supreme Court of Texas, by rule or order, or on a case by case basis, to exercise the court's inherent authority, with or without the consent of the parties, to suspend procedures for the conduct of any court proceeding affected by a disaster. Authorizes the Supreme Court to provide abatements and stays, to toll limitations, to toll or modify other filings and service deadlines, to provide for hearings or trials at locations other than the county of suit, to provide for courts of appeal to accept filings and hear arguments in remote courthouses, and to provide for alternative notice requirements. Authorizes the Texas Court of Criminal Appeals, if a disaster prevents the Supreme Court from acting, to act on behalf of the Supreme Court. Authorizes the chief justice of the Supreme Court and the presiding judge of the court of criminal appeals, if a disaster prevents both the Supreme Court and the court of criminal appeals from acting, to act on behalf of the judicial branch of state government. Signed into law by Governor 6/19/09.

[Texas HB 4314](#) Provides the court of criminal appeals may adopt rules and procedures providing for and governing the electronic filing of briefs, pleadings, and other documents for capital cases in that court. Signed into law by Governor 5/27/09.

## Structure Changes

[Connecticut HB 7001](#) Redistricts Probate Courts. Signed into law by Governor 9/25/09.

[Illinois HB 3795](#) Requires the Chief Judge of each judicial circuit establish a drug court program (currently, they may establish such

programs). Signed into law by Governor 8/28/09.

[Illinois HB 4212](#) Permits the Chief Judge of a judicial circuit to establish a military and veterans court program for veterans and active duty service members. Provides that in such judicial circuits, a veteran or active duty service member who has a substance abuse problem and who is subject to a criminal proceeding may with the consent of the prosecution and with the approval of the court be admitted into a military and veterans court program. Excludes from the program certain specified veteran or active duty service members. Signed into law by Governor 7/27/09.

[Louisiana HB 574](#) AMENDED: Authorizes the judges of any judicial District Court, by rule adopted by a majority vote of the judges sitting en banc, may assign certain divisions or sections of the court to a specialized division or section having criminal, civil, drug court, driving while intoxicated court, mental health court, juvenile, violent crimes or homicides, or other division or section having specialized subject matter jurisdiction. Provides that if a special division or section of court is assigned as a violent crimes or homicide division, the court may provide the district attorney an opportunity to request an expedited docket to more quickly hear cases involving crimes of violence that are committed with a dangerous weapon or homicide cases and specifies criteria that should be followed in cases granted expedited status. Provides that no rule adopted by the court may assign any division or section, without its consent, to the homicide division or section for longer than a three-year period. Provides that for the crimes the homicide section shall have

jurisdiction over and authorizes the judges en banc to specify other crimes committed using a firearm over which the section may exercise jurisdiction. Proposed law provides that effective November 1, 2009, cases shall be assigned to the homicide section and if more than one homicide section is created, cases shall be assigned by random allotment among those sections. Proposed law requires the criminal District Court judges, en banc, to determine which cases shall be transferred to a homicide section and authorizes any judge, on his own motion, to transfer a case by signing the necessary order of transfer respecting the principle of random allotment. Requires all pretrial writs and appeals of cases in the homicide section to be given expedited preference. Signed into law by Governor 6/30/09.

[Nevada AB 102](#) Authorizes a court to establish a program for the treatment of problem gambling. Signed into law by Governor 5/29/09.

[Nevada AB 187](#) Authorizes a District Court to establish a program for the treatment of certain eligible defendants who are veterans or members of the military, using the existing law for the treatment of offenders with mental illness as a model. Requires courts ask defendants if they are veterans or serving in the military. Authorizes justice courts and municipal courts to transfer original jurisdiction of certain cases involving misdemeanors to the District Court for the purpose of assigning offenders to the program of treatment. Signed into law by Governor 5/6/09.

[Oregon SB 262](#) Permits Chief Judge to assign two judges to panels of the Court of Appeals rather than three. Permits third

judge to be assigned if tie. Authorized Chief Judge to delegate to appellate commissioners authority to rule on motions on procedural matters. Signed into law by Governor 6/4/09.

[West Virginia HB 2684](#) Creates drug court program in state. Signed into law by Governor 4/30/09.

[Wyoming SB 107](#) Repeals existing drug court program. Creates court supervised treatment programs and permits judges to participate as they wish. Signed into law by Governor 3/5/09.

## Jurisdiction

[Maine HB 331](#) Increase to \$6,000 from \$4,500 small claims jurisdiction. Signed into law by Governor 6/27/09.

[Maryland SB 153](#) Increases to \$50,000 from \$20,000 the jurisdiction of an orphans' court in the determination of questions of title to personal property. Signed into law by Governor 5/18/09.

[New Hampshire HB 281](#) ORIGINAL: Increases small claims jurisdiction to \$10,000 from \$5,000. Requires mediation of all small claims actions exceeding \$5,000 and establishes fee for the cost of such mediation. AMENDED: Increases small claims jurisdiction to \$7,500. Requires claims from \$5,000-\$7,500 be subject to mandatory mediation. Signed into law by Governor 6/9/09.

[North Dakota HB 1296](#) Increases to \$10,000 from \$5,000 small claims jurisdiction. Signed into law by Governor 4/8/09.

[Utah SB 176](#) Increases small claims court jurisdiction to \$10,000. Signed into law by Governor 3/23/09.

## Salary and Budget

[Arkansas HCR 1010](#) Requests Congress approve legislation to implement a court fee intercept program. Approved by full Senate 3/16/09. Sent to Governor (approval not required).

[Arkansas SB 505](#) Provides that if a city court fails to achieve substantial compliance with specified accounting practices, the Legislative Joint Auditing Committee shall suspend the city court's authority to operate and inform the court and the Administrative Office of the Courts. Signed into law by Governor 3/19/09.

[Arkansas SB 801](#) Creates a task force to study the funding of the state judiciary. Signed into law by Governor 4/1/09.

[Colorado HB 1137](#) Expands the intercept of income/winnings so that outstanding criminal court fines, fees, costs, or surcharges owed pursuant to a court order are to be treated in the same manner as unpaid child support debt. Signed into law by Governor 5/21/09.

[Florida SB 2108](#) AMENDED: Redirects filing fees to the Clerks of the Court Trust Fund within the Justice Administrative Commission. Requires Florida Clerks of Court Operations Corporation (FCCOC) to be administratively housed within the Justice Administrative Commission. Transfers Clerks of the Court Trust Fund from the Department of Revenue to the Justice Administrative Commission.

Requires Chief Justice designate a member of the corporation's executive council to represent the state courts system. Grants the Speakers of the House and Senate the power to each name an ex officio member of the executive council. Provides that the Legislature is to make appropriations for the budgets of the clerks. Redefines term "state agency" for purposes of the fiscal affairs of the state to include FCCOC. Requires clerks of court be funded pursuant to state appropriations rather than from filing fees, service charges, court costs, and fines. Requires FCCOC be funded via the state's General Appropriations Act rather than a contract with the Chief Financial Officer. Repeals various sections exempting FCCOC from state procurement administrative procedures. Requires clerks prepare their budgets for submission to FCCOC with a copy to the Supreme Court. Requires FCCOC compare a clerk's expenditures and costs with the clerk's peer group and for the clerk to submit documentation justifying higher expenditures. Requires a specified percentage of all court-related fines be deposited into the clerk's Public Records Modernization Trust Fund. Requires clerks court submit financial data to the Executive Office of the Governor. Authorizes Chief Financial Officer to conduct, and the Chief Justice of the Supreme Court to request, an audit of the FCCOC or a clerk of court. Revises requirements for the audits of clerks of court. Requires Supreme Court and Attorney General jointly enter into a contract with a vendor to publish copies of Florida cases. Requires clerks refer certain unpaid accounts to a private attorney or a collection agent. Requires FCCOC develop measures and standards for reviewing the performance of clerks of court and notify the Legislature and the Supreme Court of any

clerk not meeting the standard. Requires that the clerk of court obtain the consent of the chief judge of the circuit concerning the clerk's office hours. Signed into law by Governor 6/18/09.

[Florida HB 7069](#) Re-creates the Federal Grants Trust Fund within the state courts system without modification. Abrogates provisions relating to the termination of the trust fund. Signed into law by Governor 4/27/09.

[Florida HB 7075](#) Re-creates the Operating Trust Fund within the state courts system without modification. Abrogates provisions relating to the termination of the trust fund. Signed into law by Governor 4/27/09.

[Florida SB 14A \(Special Session\)](#) Creates the State Courts Revenue Trust Fund and details the purpose of the fund is to support the activities of the state court system. Signed into law by Governor 1/27/09.

[New Mexico HJM 73](#) Requests Congress enact federal legislation that would add unpaid local and state court fines and fees to those delinquent obligations that can be intercepted through the United States Department of the Treasury offset program. Approved by Senate 3/19/09. No gubernatorial approval needed.

[New Mexico SB 277](#) Creates electronic services fund to be administered by the administrative office of the courts for the purpose of defraying the costs of operating and maintaining electronic filing services and providing public access to electronic documents. Authorizes Supreme Court to set electronic services fees in all courts. Signed into law by Governor 4/6/09.

[North Dakota HB 1148](#) Permits state auditor to conduct audit with respect to clerk of District Court services provided by a county upon the request of the state court administrator. Signed into law by Governor 4/16/09.

[Oklahoma HB 1800](#) Authorizes municipal courts to enter into contracts with collection agencies to recover court penalties, costs, fines and fees. Signed into law by Governor 5/22/09.

[Oregon HB 2287](#) Creates State Judicial Stabilization Fund and Judicial Department Collections Account and specifies fees and fines to be put into the Fund and Account. Signed into law by Governor 6/30/09.

[Texas SB 1685](#) Creates District Court records technology fund. Signed into law by Governor 6/19/09.

[Utah HB 297](#) Recodifies Budgetary Procedures Act. Requires an itemized estimate of the proposed appropriations for the Judicial Department as certified to the governor by the state court administrator. Specifies that the estimate for the Judicial Department, as certified by the state court administrator, shall be included in the governor's budget without revision, but the governor may make separate recommendations on the estimate. Signed into law by Governor 3/24/09.

[Utah HB 391](#) Recodifies Budgetary Procedures Act. Requires an itemized estimate of the proposed appropriations for the Judicial Department as certified to the governor by the state court administrator. Specifies that the estimate for the Judicial Department, as certified by the state court

administrator, shall be included in the governor's budget without revision, but the governor may make separate recommendations on the estimate. Signed into law by Governor 3/31/09.

[Washington HB 2362](#) Establishes various temporary surcharges to the fees collected by the superior and District Courts. Creates Judicial Stabilization Trust Account and directs surcharges be directed to that account for use subject to appropriation. Signed into law by Governor 5/19/09.

## Other

[Colorado HB 1316](#) Makes it a crime to post the personal information of a judge, magistrate, or prosecutor on the internet if the dissemination of the information poses an imminent and serious safety threat. Allows judge, magistrate or prosecutor to request public records containing their address or phone number be confidential. Signed into law by Governor 5/21/09.

[Iowa HB 697](#) Provides that a person who harasses a judicial officer, court employee, or a family member of a judicial officer or court employee with the intent to interfere with or improperly influence, or in retaliation for, their official acts commits an aggravated misdemeanor. Signed into law by Governor 4/20/09.

[New Hampshire HB 171](#) Establishes a commission to evaluate mental health court and set standards for the operation of mental health courts. Signed into law by Governor 7/29/09.

[North Carolina HB 473](#) ORIGINAL:  
Permits magistrates to carry guns into

courthouses. AMENDED: Permits magistrates to carry guns into courthouses if magistrate is in the building to discharge the magistrate's official duties, has a concealed handgun permit, has successfully completed weapons retention training substantially similar to that provided to certified law enforcement officers in North Carolina, and secures the weapon in a place that is not accessible to the public when the weapon is not on the magistrate's person. Signed into law by Governor 8/26/09.

[Texas HB 1831](#) Requires emergency management training for county judges. Signed into law by Governor 6/19/09.

[Texas HB 559](#) Requires nondisclosure of certain personal information in voter registration records and concealed handgun license records that relates to a justice of the peace. Signed into law by Governor 6/19/09.

[Texas HB 598](#) Permits the drivers licenses of state and federal judges and their spouses to use their assigned courthouse rather than their home address. Signed into law by Governor 6/19/09.

[Texas SB 1259](#) Allows clerks of the appellate courts to destroy paper documents held or stored electronically. Signed into law by Governor 6/19/09.

[Texas SB 281](#) Requires confidentiality of the home address information of the spouses

of federal judges and state judges. Signed into law by Governor 6/19/09.

[Utah SJR 6](#) ORIGINAL: Amends legislative rules to provide guidelines and restrictions for legislators when communicating with judges and others. Prohibits legislators from communicating with a judge in reference to a particular judicial case or proceeding until a final order has been made. Provides guidelines for communicating with the Administrative Office of the Courts or the clerk of the court in other circumstances. Provides guidelines for keeping records of communications with the judiciary. Provides exception to communications made in the ordinary course of a legislator's private employment, except where a legislator attempts to use his or her status as legislator to exert undue influence. AMENDED: Same, but prohibits communications with judges if that communication will unduly influence the case or proceeding. Approved by full Senate 3/18/09. No gubernatorial approval required.

[Washington SB 5233](#) Allows clerk of the Superior Court to keep offices at places in a county other than the county seat. Signed into law by Governor 4/16/09.

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