

# Gavel to Gavel

A review of state legislation affecting the courts

Week ending May 20, 2011

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## *Focus: Electronic Filing*

As courts move to more expansive use of electronic filing, more than technical issues have come up. Two in particular (financing and dated statutory language) require the active participation and permission of legislatures for implementation. This year saw several new laws and some bills still currently active that would go a long way to help, or in the case of New Mexico harm, e-filing and the courts.

### **Law**

[South Dakota HB 1038](#) Requires clerk of Supreme Court collect certain fees for the electronic transmission of court records. Signed into law by Governor 2/17/11.

[Virginia SB 1369](#) Provides that clerks may charge a fee of \$25 for civil or criminal proceedings filed electronically and an additional \$10 fee for subsequent filings in such proceedings. Requires fee go to clerk's local fund to cover operational expenses of the electronic filing system. Clarifies that clerks may provide official certificates and certified copies of records that contain personal identifying information electronically upon request of a party or attorney. Makes various changes to clerks' duties regarding electronic filing. Signed into law by Governor 3/26/11.

### **On Governor's desk awaiting action**

[Florida SB 170](#) Requires each state attorney and public defender to electronically file court documents with the clerk of the court and receive court documents from the clerk of the court. Requires the Florida Prosecuting Attorneys Association and the Florida Public Defender Association report to the President of the Senate and the Speaker of the House of Representatives by a specified date on the progress made to use the Florida Courts E-Portal system or the clerks' offices portals to electronically file and receive court documents, etc. Approved by full House 5/4/11. To Governor for approval.

### **Active**

[California SB 326](#) AS AMENDED: Requires the Judicial Council, in consultation with stakeholder groups, and within 18 months of the date of enactment of this act, to adopt a rule of court to require courts that have fully implemented the California Case Management System to provide timely the public, to the extent possible and practicable, with same-day access to case-initiating civil and criminal court records, as defined. Approved as amended by Senate Committee on Judiciary 5/9/11.

[Massachusetts HB 2587](#) Creates 25-member commission investigate and make recommendations as to the feasibility of increasing electronic filings, records management and transactions within the judiciary. In Joint Committee on Judiciary.



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[Massachusetts SB 1621](#) Creates 25-member commission investigate and make recommendations as to the feasibility of increasing electronic filings, records management and transactions within the judiciary. In Joint Committee on Judiciary.

[New York AB 2862](#) Permits the electronic filing of papers in local criminal courts in certain instances. In Assembly Codes Committee.

[Oregon HB 2690](#) Allows Chief Justice of Supreme Court to adopt rules governing use of electronic applications for all records of courts. Modifies laws on filing of transcript on appeal to allow electronic filing of transcript. Approved by House Judiciary Committee 3/29/11.

[Oregon HB 2691](#) Allows Chief Justice of Supreme Court to adopt rules governing use of electronic applications for all records of courts. Approved by House Judiciary Committee 4/27/11.

[Texas HB 2174](#) Creates judicial access and improvement account to provide funding for basic civil legal services, indigent defense, and judicial technical support through certain county service fees and court costs imposed to fund the account. Authorizes the Texas Supreme Court to use an amount determined by the Supreme Court, not to exceed **\$1 million annually** (ORIGINAL BILL: \$13 million), to phase in electronic filing and retrieval in Texas courts. Authorizes the Supreme Court, in consultation with the judicial committee on information technology, to enter into an agreement with the Office of Court Administration of the Texas Judicial System to implement the electronic filing and retrieval in Texas courts, including acquiring the necessary technology, software, and data storage. Approved as amended by House Judiciary & Civil Jurisprudence Committee 4/20/11.

[Texas SB 726](#) Creates judicial access and improvement account to provide funding for basic civil legal services, indigent defense, and judicial technical support through certain county service fees and court costs imposed to fund the account. Authorizes the Texas Supreme Court to use an amount determined by the Supreme Court, not to exceed **\$12 million annually** to phase in electronic filing and retrieval in Texas courts. Authorizes the Supreme Court, in consultation with the judicial committee on information technology, to enter into an agreement with the Office of Court Administration of the Texas Judicial System to implement the electronic filing and retrieval in Texas courts, including acquiring the necessary technology, software, and data storage. Approved by full Senate 4/14/11.

### **Active during session, currently dead**

[Arizona SB 1158](#) Provides supreme court and superior courts shall (currently may) provide for the electronic filing of documents and electronic access to court records. Adds bulk data to required material courts shall provide. Provides the custodian of bulk data may require a dissemination contract and disclaimer before an individual, private company or public organization receives electronic access to court records or bulk data. Approved by Senate Banking and Insurance Committee 2/15/11. Died on Senate floor.

[Florida HB 443](#) Requires that each state attorney and public defender implement a system by which the state attorney and public defender can electronically file court documents with the clerk of the court. Requires that the Florida Prosecuting Attorneys Association and the Florida Public Defender Association report to the President of the Senate and the Speaker of the House of Representatives by a specified date on the progress made in

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implementing the electronic filing system, etc. Approved by House Judiciary Committee 4/21/11. Replaced by Florida SB 170.

[Kansas SB 461](#) Transfers power to establish trial court e-filing and e-document storage to Supreme Court from local chief judge. Approved by full Senate 2/22/11. Died in House Committee on Judiciary.

[Mississippi SB 2253](#) AS AMENDED: Increases judicial salaries. Adds specific statutory obligation for chief justice in supporting and implementing electronic filing systems for the courts and drug courts. Approved by full Senate 2/9/11. Rejected by full House 2/24/11.

## **No session activity**

[Maine HB 644](#) Provides “the Judicial Department shall design and implement a plan to upgrade its computer system to ensure access by Maine citizens and attorneys to electronic filing and scheduling online.” Died in Joint Committee on Judiciary.

[Mississippi HB 1299](#) Provides if electronic filing is required court must provide computer and scanner at courthouse. Died in House Judiciary A Committee.

[New Mexico SB 3281](#) Repeals judiciary's “electronic services fund” and transfers balance to general fund, effectively ending e-filing in state. Died in Senate Judiciary Committee.

[New Mexico SB 388](#) Declares the state's courts “shall not charge an electronic services fee to persons who choose not to use electronic services and shall allow persons to file and access documents without using electronic services.” Died in Senate Public Affairs Committee.

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## Jurisdiction: Newly Introduced

NONE

## Jurisdiction: Floor and Committee Activity

[California SB 221](#) Increases small claims from \$7,500 (generally) to \$10,000 (generally). Approved by Senate Committee on Judiciary 5/16/11.

[Minnesota SB 506](#) ORIGINAL: Increases conciliation court jurisdiction to \$15,000 from \$7,500 or, if case involves consumer credit transaction, to \$7,500 from \$4,000. AMENDED: Increases conciliation court jurisdiction to \$20,000 from \$7,500 or, if case involves consumer credit transaction, to \$10,000 from \$4,000. Approved as amended by full Senate 5/16/11.

[Tennessee SJR 141](#) Requests the Congress “restrict judicial activism” by submitting following amendment to U.S. Constitution to states for ratification: “In deciding cases under the Constitution and Laws of the United States, the Supreme Court of the United States and all other federal courts exercising authority under Article III of the United States Constitution shall strictly construe the enacted text of any constitutional provision and any statute or other law in interpreting or applying the law of the United States. The text of this Constitution shall be interpreted according to its meaning at the time of its enactment, which meaning shall remain the same until changed pursuant to Article V. This article shall apply to judgments, orders, and opinions of Federal courts made on or after one year after the date of ratification of this article of amendment \_\_\_\_.” Approved by Senate Finance, Ways and Means Committee 5/19/11. Approved by full Senate 5/20/11.

## Qualifications and Terms: Newly Introduced

NONE

## Qualifications and Terms: Floor and Committee Activity

[New Hampshire HB 510](#) Requires marital masters be New Hampshire residents. Rejected by Senate Judiciary Committee 5/13/11.

## Rule Making Authority: Newly Introduced

NONE

## Rule Making Authority: Floor and Committee Activity

[Texas HB 1559](#) AS AMENDED: Prohibits state courts from destroying a document filed with, presented to, or produced by the court before January 1, 1951 unless allowed by rules adopted by the Texas State Library and Archives Commission. Approved by full Senate 5/19/11. To Governor for approval.

[Texas HB 2847](#) Permits use of video conferencing systems for inmate witness testimony, pleas, and other actions. Approved by Senate Committee on Criminal Justice 5/20/11.

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[Texas SB 791](#) Provides rules adopted by the supreme court are to be made available to those requesting the electronically in lieu of paper copies. Approved by House Judiciary & Civil Jurisprudence 5/16/11.

## **Salary and Budget: Newly Introduced**

[South Carolina HB 4242](#) Provides that, where probate courts exist, governing body must provide space and support and must effectuate, expeditiously and subject to pertinent budgetary parameters, all requests and directions from the probate judge concerning the needs and operation of the judge's judicial agency. Requires governing body make every good-faith effort to adopt, approve, and effectuate the periodic budget as proposed by the probate judge. In House Committee on Judiciary.

## **Salary and Budget: Floor and Committee Activity**

[Maine SB 337](#) Allows the judicial branch to contract with state agencies or private debt collection services to collect overdue fines and fees. Approved by full House 5/16/11. To Governor for approval.

[Minnesota HB 1647](#) Revises judicial and other state employee retirement plans statutory salary scale and payroll growth actuarial assumptions. Approved by House Government Operations and Elections Committee 5/18/11.

[Minnesota SB 1047](#) Requires adoption of zero-based budgeting by judicial branch starting July 2013. House and Senate approve conference report 5/18/11. To Governor for approval.

[Nevada AB 196](#) Requires district courts forward to the county treasurer the necessary information for the collection of the debt of a criminal defendant. Permits county unable to collect the debt to enter into a cooperative agreement with the Office of the State Controller for the purpose of assigning to the Office of the State Controller the responsibility for collecting the debt. Requires a defendant to pay costs and fees associated with the efforts to collect a debt. Approved with Senate amendment by full Senate 5/20/11. To Assembly to concur.

[Nevada AB 276](#) Requires State Controller post all expenditures and revenues of the state “including, without limitation, the operation of the courts of this State.” Approved by Senate Government Affairs Committee 5/18/11.

[Oklahoma HB 2174](#) Authorizes the Administrative Director of the Courts use the State Judicial Revolving Fund for all expenses related to the district courts, Court of Civil Appeals and the Supreme Court. (Currently fund is restricted to specified expenses.) Rejected by full Senate 5/17/11. Reconsidered and approved by full Senate 5/19/11. To Governor for approval.

[Texas SB 1059](#) Expands existing program for collection of court costs, fees, and fines to all counties (currently applies only in counties with population over 50,000). Approved by House Committee on Criminal Jurisprudence 5/18/11.

[Texas SB 1521](#) Includes warrant officers and related equipment in the definition of security personnel, services, and items related to the buildings that house the municipal court for purposes. of distribution of money appropriated from a municipal court building security fund Approved by House Committee on Criminal Jurisprudence 5/18/11.

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## Selection: Newly Introduced

[Nebraska LR 283](#) Directs Judiciary Committee to conduct an interim study to examine issues surrounding judicial independence including, but not limited to, Nebraska's current method of judicial retention. In Senate Executive Board.

## Selection: Floor and Committee Activity

NONE

## Structure Changes: Newly Introduced

NONE

## Structure Changes: Floor and Committee Activity

[Massachusetts SB 1907](#) Reorganizes state's judicial system. Alters numerous powers of chief justice of the trial court, chief administrative justice(s), court administrator(s), chief justice for administration and management, supreme judicial court, etc. Approved by full Senate 5/19/11.

[Nevada SB 25](#) AS AMENDED: In a township whose population is less than 1,100,000, one justice of the peace is required for each 100,000 population of the township, or fraction thereof, until the township has four justices of the peace, and thereafter, one justice of the peace is required for each 125,000 population of the township, or fraction thereof, over a population of 300,000. In a township whose population is 1,100,000 or more, one justice of the peace is required for each 100,000 population of the township, or fraction thereof, up to a population of 1,100,000, and thereafter, one justice of the peace is required for each 125,000 population of the township, or fraction thereof, over a population of 1,100,000. Approved by Assembly Committee on Judiciary 5/20/11.

[Nevada SB 94](#) Creates 10th judicial district and redistricts other districts accordingly. Approved by Assembly Committee on Judiciary 5/20/11.

[Nebraska LB 699](#) Alters Supreme Court districts. Approved by full Senate 5/20/11. To Governor for approval.

[North Carolina HB 112](#) Partial realignment of superior court districts. Approved by House Committee on Elections 5/19/11.

[Rhode Island SB 117](#) ORIGINAL: Redistricts state district court. Reduces number of divisions of the district court from 6 to 4. HOUSE AMENDED: Same, but alters towns/cities in each district. Approved with House amendment by full House 5/18/11. To Senate to concur with amendment.

## Other: Newly Introduced

NONE

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## Other: Floor and Committee Activity

[California AB 810](#) Authorizes the clerk of the court to employ as many foreign language interpreters as may be necessary to interpret cases in the superior court, and to translate documents as specified. Requires the clerk of the court to assign interpreters when needed to interpret in criminal and juvenile delinquency cases in the superior court, and in civil cases if an assignment can be made without causing the court to be unable to perform its obligations in criminal proceedings. Deletes the authorization for the collection of a fee, and would state that these provisions are declarative of existing law. Approved by Assembly Committee of Appropriations 5/18/11.

[Missouri HB 111](#) HOUSE AMENDED: Modifies numerous parts of law related to courts and judicial proceedings. Prohibits Department of Revenue from releasing the home address or any information contained in the department's motor vehicle or driver registration records regarding any state or federal judge or his or her immediate family members. Allows any state or federal judge to request the issuance of special license plates and driver's licenses. Increases from 75 to 78 mandatory retirement age for municipal judges. Requires city, county, or the State of Missouri to pay civil filing fee if they are the prevailing party in case (currently, not required to pay, win or lose). SENATE AMENDED: Removes all references to above items. Approved with Senate amendments by full Senate 5/13/11. House concurs with Senate amendment 5/13/11. To Governor for approval.

[Oregon HB 2367](#) Requires State Court Administrator to conduct biennial electronic survey of all county law libraries and law library services provided by counties Approved by Senate Judiciary Committee 5/17/11. Approved by full Senate 5/18/11.

[Tennessee HB 1198](#) ORIGINAL: Provides that if a complaint is filed against a judge who is or was a member of the court of the judiciary at the same time as the investigative counsel served as counsel for the court, the investigative counsel must retain a special counsel to investigate any such complaint. AMENDED: Reconstitutes the membership of the Court of the Judiciary (COJ) effective October 1, 2011, and revises the appointment requirements. Reduces, from 16 to 12, the number of COJ members. Removes the appointment authority of the Tennessee Supreme Court, the Tennessee Bar Association, and the Governor. Authorizes the Speakers of House and the Senate to each appoint six members. Reduces, from four to two years, the term of each member of the COJ. Requires the COJ to file a quarterly report with the Chairmen of the Senate and House Judiciary Committees detailing the number of complaints for the previous quarter, the disposition of each complaint, and the status of any investigations. Requires the expenses incurred in the administration of this chapter to be paid through the Secretary of State's office rather than the Administrative Office of the Courts (AOC). Approved as amended by House Finance, Ways & Means Committee 5/19/11. Re-referred to House Judiciary Committee 5/20/11.

[Tennessee HB 2039](#) Authorizes judges who complete certain firearms training to carry a weapon in courtrooms. Approved by full House 5/2/11. Approved by full Senate 5/20/11. To Governor for approval.

[Tennessee SB 1088](#) Provides that if a complaint is filed against a judge who is or was a member of the court of the judiciary at the same time as the investigative counsel served as counsel for the court, the investigative counsel must retain a special counsel to investigate any such complaint. Approved by Senate Judiciary Committee 5/20/11.

[Tennessee SB 1775](#) Authorizes judges who complete certain firearms training to carry a weapon in courtrooms. Replaced by HB 2039.

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[Texas HB 1771](#) Creates Specialty Courts Advisory Council in the governor's criminal justice division to assist with the review and prioritization of grant applications from specialty courts. Approved by Senate Committee on Jurisprudence 5/18/11. Approved by full Senate 5/20/11. To Governor for approval.

[Texas HB 1781](#) Requires supreme court, the court of criminal appeals, courts of appeals, and any state judicial agency to examine all reporting requirements set by statute prior to 2009 and identify those not needed or redundant. Approved by Senate Government Organization Committee 5/18/11.

[Texas HB 2017](#) Removes provisions allowing special license plates for justices of supreme court or judge of court of criminal appeals. Allows for issuance of special license plates to most state judges. Allows for issuance of special license plates to federal judges. Approved by Senate Committee on Transportation & Homeland Security 5/19/11.

[Texas HB 2973](#) Protects individual's right of free speech, right to petition, or right of association, and right to petition. Includes in right to petition right to communication with any judicial proceeding, any issue related to a matter in a judicial proceeding, and communications likely to enlist the public participation in judicial decisions. Gives right to directly address any "public servant" and includes in definition of "public servant" any judges, any elected officials, and jurors. Requires any motion to dismiss in a suit related to an individual's right of free speech, right to petition, or right of association be decided within 30 days of hearing on motion. Approved with Senate amendment by full Senate 5/18/11. To House to concur with Senate amendment.

[Texas HCR 60](#) Warns of "international law can influence the supreme court's rulings, as illustrated in the 2005 decision *Roper v. Simmons*, raising the possibility that a future court might allow external authorities to erode the American tradition of treating parental rights as fundamental rights." Finds "Explicitly enumerating the rights of parents in the Constitution of the United States will protect these rights in perpetuity from the shifting ideologies and interpretations of the supreme court and from the threat of being placed under the jurisdiction of the international community." Urges Congress adopted a Parent's Rights Amendment to U.S. Constitution. Approved by full House 5/18/11.

[Texas HR 1485](#) Recognizing Municipal Courts Week in Texas. Approved by full House 5/19/11.

[Texas HR 1486](#) Recognizing Municipal Courts Week in Texas. Approved by full House 5/19/11.

[Texas SB 364](#) Requires courts provide information to department of public safety on the prosecution of certain offenses relating to the operation of a motor vehicle while intoxicated. Approved by House Committee on Homeland Security & Public Safety 5/17/11.

[Texas SB 701](#) Requires judiciary and other branches/agencies to post "high-value data sets" on Internet. Defines "high-value" as "information that can be used to increase state agency accountability and responsiveness, improve public knowledge of the agency and its operations, further the core mission of the agency, create economic opportunity, or respond to need and demand as identified through public consultation." Approved by House Committee on Technology 5/19/11.

[Washington HB 1371](#) Transfers most functions of the Sentencing Guidelines Commission to the Department of Corrections and the Administrative Office of the Courts. Approved with Senate amendment by Senate Committee on Ways & Means 5/16/11. Approved by full Senate 5/20/11. To House to concur with amendment.

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