

# Gavel to Gavel

A review of state legislation affecting the courts

August 30, 2011

Special Edition

## *Special Edition: Courts and Disasters*

Between earthquakes in Virginia and Colorado and Hurricane Irene, the last seven days have seen more than their share of natural disasters. In a trend first noticed after 9/11, and accelerated after the 2005 hurricane season, state legislatures have begun considering and enacting bills to give individual courts and state chief justices (individually or in conjunction with their respective supreme courts) additional flexibility to handle such crises. Examples considered in the last several years include:

### Law

[Arkansas SB 89 \(2007\)](#) Directs Administrative Office of the Courts assist the Supreme Court with the creation and management of a state security and emergency preparedness plan for the judicial branch of government. Directs AOC provide assistance and support to city and county governments of this state for the adoption and implementation of local security and emergency preparedness plans for circuit and district courts. Creates within AOC Director of Security and Emergency Preparedness for the judicial branch of government.

[Connecticut HB 5539 \(2010\)](#) Provides Chief Justice may take any action necessary in the event of a (as defined by statute) major disaster, emergency, civil preparedness emergency, disaster emergency, or a public health emergency, to ensure the continued efficient operation of the Supreme, Appellate and Superior Courts, the prompt disposition of cases and the proper administration of judicial business. Such necessary action may include: (1) Establishing alternative locations to conduct judicial business in the event that one or more court locations cannot be used, (2) suspending any judicial business that is deemed not essential by the Chief Justice, and (3) taking any other appropriate action necessary to ensure that essential judicial business is effectively handled by the courts. (See also [HB 6710 of 2009](#))

[Delaware SB 25 \(2009\)](#) Provides for the operation of the courts in the event of an emergency due to natural or manmade causes that destroys or severely damages one or more court facilities or severely impacts the ability to staff the courts. Grants the Chief Justice the authority to declare a judicial emergency when there are emergency circumstances affecting one or more court facilities. Provides the order declaring a judicial emergency shall be limited to an initial duration of 30 days, but may be modified or extended for additional 30 day periods. Provides Chief Justice may also 1) Order that a court may operate in a county other than the county in which it is normally located. 2) Extend statutes of limitations and time periods prescribed by statute as well as those time limitations prescribed by court rule or administrative directive which the Chief Justice already has the authority to extend pursuant to his authority under Art. IV, Section 13 of the Delaware Constitution 3) Declare that specific proceedings not normally conducted by audiovisual device may be conducted in this manner. When such usage is not otherwise authorized by statute or court rule, an explanation of the compelling state interest in such usage shall be included in the order and 4) Take such other actions as the Chief Justice reasonably believes necessary for the continued operation of the courts during a judicial emergency. Provides that the host county shall be a proper venue for proceedings. Establishes provisions of this law shall preempt and supersede but not repeal any conflicting provisions of any other provision of law. (See also [HB 431 of 2007](#))

[Georgia HB 1294 \(2008\)](#) Allows Chief Justice to extend judicial emergencies beyond normal limitations if a public health emergency exists. Emergency declaration may remain in place for as long as the public health emergency exists.

[Georgia HB 339 \(2011\)](#) Revises the courts to which a challenge of a quarantine or vaccination order may be brought and manner of appealing orders concerning such challenges. Removes chief judge of the court of appeals' power to declare judicial emergencies. Provides extensions of judicial emergencies by chief justice may only last long as governor has declared state of emergency.

[New Hampshire SB 370 \(2008\)](#) Grants the chief justice of the supreme court the power to enter orders to suspend, toll, or otherwise grant relief from time deadlines imposed by statutes and rules of procedure, for a 21-day period, in the event of a declared state of emergency. Permits the legislature to terminate such orders by concurrent resolution.

New York [AB 6921](#) / [SB 2849](#) (2009) Repeals most existing law related to judicial emergencies. Provides if a court location is unsafe or impractical for the holding of a trial court, then the Governor may by order appoint another place for the temporary holding of court after consulting with the Chief Judge or his or her designee if practicable. Provides for the Court of Appeals and for trial courts where the Governor has not acted, the relocation power would fall to the Chief Judge. Provides for intermediate appellate courts ( i.e. Appellate Division and Appellate Terms of Supreme Court), the relocation power would fall to the Presiding Justice of the Appellate Division after consulting with the Chief Judge or his or her designee. Provides all temporary relocations must be to the most proximate place that the term of court safely and practicably can preside, and should be consistent with applicable State and local disaster preparedness plans. Provides for trial courts, temporary relocations must be after consultation with relevant local leaders (e.g., county executives or mayors) if practicable. Provides for relocation orders would expire within 30 days but could be renewed for successive periods of 30 days each in like fashion as an original order. Provides regardless where a court temporarily sits, the court would continue to preside on behalf of its original jurisdiction (i.e. judicial department, judicial district, county, city, etc.) and the same substantive and procedural laws (e.g. governing venue, jury selection, papers and appeals) would apply as if the court were not relocated. Provides if a court is relocated temporarily outside its original jurisdiction, then facility costs would not be borne by the receiving locality but instead would become State costs charged to the Office of Court Administration. Memorializes the Chief Judge's emergency relocation powers as provided above. Recognizes the continuing obligation of the State Disaster Preparedness Commission and local disaster preparedness commissions to insure that the disaster preparedness plans for which they are responsible take appropriate account of the provisions of this measure. (See also [AB 10616 / SB 6900 of 2008](#))

[North Carolina HB 1269 \(2009\)](#) Allows courts to be closed for "catastrophic conditions" and defines the term. Allows Chief Justice to extend certain deadlines for "catastrophic conditions" and to issue any emergency directives necessary to ensure the continuing operation of essential trial or appellate court functions for 30 days, subject to 30 day renewals. (See also [SB 861 of 2009](#))

[Oregon HB 2322 \(2007\)](#) Provides Chief Justice may designate locations in the state for the sitting of circuit courts in the event of an emergency and that such locations designated need not be in the circuit court's judicial district.

[Oregon SB 270 \(2009\)](#) Grants Chief Justice power to establish procedures for closing courts in emergencies and to establish standards for determining when courts are closed for purposes of ORCP 10, ORS 174.120 and other rules and laws that refer to periods of time when courts are closed.

Indicates featured legislation

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[Rhode Island HB 5309 / SB 438 \(2007\)](#) Adds the state court administrator to the emergency management advisory council.

[Texas HB 1861 \(2009\)](#) Authorizes the Supreme Court of Texas to modify or suspend procedures for the conduct of any court proceeding affected by a disaster during the pendency of a disaster declared by the governor and sets forth contingencies that provide for such action by another court or judge if a disaster prevents the supreme court from acting. Authorizes the local rules of administration that must be adopted by district and statutory county court judges in each county to provide for a coordinated response for the transaction of essential judicial functions in the event of a disaster. Includes as a purpose of the Texas Disaster Act of 1975 clarifying and strengthening the role of the judicial branch of state government in prevention of, preparation for, response to, and recovery from disasters. (See also [HB 3768 of 2009](#); [HB 3995 of 2009](#); [SB 992 of 2009](#))

Virginia [HB 883 / SB 127](#) (2010) Sets out a procedure for the Supreme Court to follow in entering an order declaring a judicial emergency when there is a disaster as defined in the Commonwealth's Emergency Services and Disaster Law. Permits the judicial emergency order to suspend, toll, extend, or otherwise grant relief from time limits or filing requirements in any court affected by the order and allows designation of a neighboring jurisdiction as proper venue for civil and criminal proceedings.

## Vetoed

[New Hampshire SB 109 \(2007\)](#) Grants the chief justice of the supreme court the power to enter orders to suspend, toll, or otherwise grant relief from time deadlines imposed by statutes and rules of procedure, for a 21-day period, when certain emergency situations occur. Permits the legislature to terminate such orders by concurrent resolution.

[Texas HB 4086 \(2009\)](#) Authorizes the local rules of administration that must be adopted by district and statutory county court judges in each county to provide for a coordinated response for the transaction of essential judicial functions in the event of a disaster in addition to other matters. Includes in the purposes of provisions for emergency management clarifying and strengthening the role of the judicial branch in prevention of, preparation for, response to, and recovery from disasters. Authorizes the Supreme Court of Texas to exercise the court's inherent authority by rule or by order or on a case by case basis, with or without the consent of the parties, to suspend procedures for the conduct of any court proceeding affected by a disaster. Provides that this authority includes the authority to provide abatements and stays, 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 chief justice, in the event that a disaster prevents the Supreme Court from acting, to act on behalf of the Supreme Court. Authorizes the court of criminal appeals, in the event that a disaster prevents either the Supreme Court or the chief justice from acting, to act on behalf of the chief justice. Authorizes the presiding judge of the court of criminal appeals, in the event that a disaster prevents either the Supreme Court, the chief justice, or the court of criminal appeals from acting, to act on behalf of the court of criminal appeals. Requires the division of emergency management, in preparing and revising the state emergency management plan, to seek the advice and assistance of the judicial branch, in addition to other entities and persons.

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## Approved by one chamber

[Connecticut HB 6710 \(2009\)](#) Provides Chief Justice may take any action necessary in the event of a major disaster, emergency, disaster emergency or civil preparedness emergency, or a public health emergency, to ensure the continued efficient operation of the Supreme, Appellate and Superior Courts, the prompt disposition of cases and the proper administration of judicial business. Provides such “necessary action” may include: (1) Establishing alternative locations to conduct judicial business in the event that one or more court locations cannot be utilized, (2) suspending any judicial business that is deemed not essential by the Chief Justice, and (3) taking any other appropriate action necessary to ensure that essential judicial business can be effectively handled by the courts.

[Georgia HB 185 \(2009\)](#) Authorizes Chief Justice to extend the duration of a judicial emergency order when a public health emergency exists until the emergency ends (currently a maximum of 60 days).

[Texas SB 565 \(2007\)](#) Authorizes courts of appeals, district courts, and statutory county courts to hear cases, hold court, and transact business at the county seat of a county in the court's own or an adjacent administrative judicial region, by order of the chief justice of the Texas Supreme Court.

## Died or rejected in committee

[Nebraska LB 1029 \(2010\)](#) Allows county courts to close due to inclement weather or other emergencies. Provides if a court is closed due to such circumstances, the day shall be designated as a nonjudicial day.

[New Hampshire SB 31 \(2007\)](#) Adds Chief Justice to state’s advisory council on emergency preparedness and security.

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