Gavel to Gavel

A review of state legislation affecting the courts

April 2, 2009

Focus: Mental Health Courts

As a follow up to a previous Focus on Veterans' Courts, this issue will examine the issue of mental health courts and legislative activity regarding their creation and funding.

2007/2008

In the last several years, at least 17 states have introduced legislation on the subject of mental health courts. Those pieces of legislation receiving floor action by at least one chamber included:

California's SB 851 of 2007 would have authorized the state's superior courts to develop and implement mental health courts as a preguilty plea program or a deferred entry of judgment program. The bill would also have allowed parolees to participate in the mental health courts. While acknowledging the mental health courts were "an important component of public safety and for managing our criminal justice system," Governor Schwarzenegger nevertheless vetoed the bill because of the cost as well as his contention that it "allows people who have committed crimes to avoid punishment completely because of a mental health issue." The Senate failed to override the veto.

Idaho's HB 180 of 2007 fared better. It provided additional funds for mental health and similar problem solving courts through alcohol taxes. This allowed an estimated 275 offenders to be diverted to drug and mental health courts in fiscal year 2008 and was signed by Governor C.L. "Butch" Otter. HB 386 of 2008 would have further expanded the additional funding through alcohol taxes but was approved only by the House.

Michigan's HB 6305 of 2008 would have repealed a mandate for a community mental health services program (CMHSP) to provide programs designed to divert persons with a mental illness from jail incarceration and replace the repealed section with a requirement that designated stakeholders develop programs to divert individuals with mental illness, such as mental health courts. The full House rejected the proposal on a 47-56 vote.

Nevada's SB 326 of 2007 would have created a Committee on Co-Occurring Disorders to evaluate the utilization of existing resources for the treatment of persons with co-occurring disorders and develop recommendations concerning innovative funding alternatives to promote and support mental health courts. The bill was approved by the Senate and the Assembly Ways and Means Committee but died on the Assembly floor when the session adjourned.

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West Virginia's SCR 68 of 2008 would have directed the Legislature's Joint Committee on Government and Finance to study Alcohol and Drug Mental Health Courts while HCR 65 would have tasked that responsibility to the Joint Committee on Regional Jail and Correctional Facility Oversight. Both chambers passed their respective versions but neither concurrent resolution was approved by the other chamber.

2009

Among the legislation receiving at least committee approval this year are:

Florida's HB 349 and Senate SB 1180 would create a workgroup to review state policy and budgeting issues affecting adults with serious mental illness who also have involvement with the state criminal justice system, including the use of mental health courts.

New Hampshire's HB 171 establishes a commission to evaluate mental health courts and establish standards for the operation of mental health courts. It has been approved by the full House and is pending in the Senate's Judiciary Committee.

Pennsylvania's SB 383 authorizes each of the state's Courts of Common Pleas to create problem solving courts, including mental health courts. The bill also creates a statewide problem solving courts coordinator to help assist in these efforts. The bill has been approved by the Senate Judiciary Committee.

Virginia's SB 854 would have directed the state's Office of the Executive Secretary of the Supreme Court create between two and five pilot mental health courts in the commonwealth. While the bill was approved by the Senate, it died in a House committee with no action taken.

Selection: Newly Introduced

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. In House Election Law and Campaign Finance Reform Committee.

North Carolina SB 766 (Constitutional Amendment) Removes power of senior regular resident Judge of the Superior Court to appoint magistrates and grants that power to the Chief District Judge. Provides that if Chief District Judge fails to appoint magistrate in 60 days of receiving names submitted by the Clerk of the Superior Court, grants senior regular resident Judge power to appoint anyone whether submitted by Clerk or not. Allows Chief District Judge may reappoint a magistrate with six or more years of experience regardless of the nominations made by the Clerk. In House Committee on Judiciary I.

Selection: Floor and Committee Activity

Georgia HB 156 Provides that elected magistrate judges who are performing ordered military duty may continue in office and be eligible for reelection during such duty. Approved by full Senate 3/30/09. To Governor for approval.
Iowa SB 283 AS AMENDED: Authorizes the chief justice to delay the nomination process of any judicial officer for up to 180 days for budgetary reasons. 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 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 full Senate 3/23/09. Approved by House Judiciary Committee 3/30/09.

Minnesota SB 15 Expands definition of public official in campaign finance and public disclosure law to include district court judge, Appeals Court judge, or Supreme Court justice. Approved by Senate State and Local Government Operations and Oversight 3/30/09.

Minnesota SB 791 Requires runoffs, rather than recounts, in judicial and other elections. Approved as amended by Senate State and Local Government Operations and Oversight Committee 3/30/09.

Missouri HJR 10 (Constitutional Amendment) AS AMENDED: Increases from three to four the number of judicial candidates nominated by the Nonpartisan Judicial Commission for a vacancy in the office of judge of specified courts from which the Governor may make an appointment. Allows the Governor to veto the first list of candidates provided by the commission within 60 days. Provides the Governor must choose a candidate from a second list submitted by the commission within 45 days or the commission is authorized to appoint one of the nominees from the second list. Changes the composition of nonpartisan judicial commissions. Appellate Judicial Commission: 1 Supreme Court justice, 3 members of the Missouri Bar, 4 citizens who are not members of the bar appointed by the Governor and confirmed by the Senate. Circuit Judicial Commissions: 1 chief judge of district, 2 members of the Missouri Bar, 3 citizens appointed by the Governor and confirmed by the Senate. Requires judicial
selection process must favor openness and public access and that all hearings, debates, and votes of the commissions must be open to the public and press. Requires list of applicants for any judicial vacancy be open to the public and posted on the supreme court website. Requires all information provided to the nominating commissions be given to the Governor. Transfers approval of expenses from supreme court to office of administration. Approved as amended by House Rules committee 3/30/09.

Missouri SJR 9 (Constitutional Amendment) AS AMENDED: Modifies membership of the Appellate Judicial Commission and Circuit Judicial Commission and make appointments to both commissions subject to the approval by the majority of the Senate. Requires members of the Circuit Judicial Commission would serve for a four year term. Ends the terms of all current members of the Appellate Judicial Commission and Circuit Judicial Commission. Allows newly elected governors to remove members of the commissions who were appointed by the previous Governor, except for those commission members elected by the members of the Missouri bar. Requires list of applicants for judicial appointments be public record and posted on the supreme court's website. Requires all information available to the commission be made available to the Governor. Requires all hearings, debates and votes be open to the public with limited exceptions. Repeals supreme court's power to establish rules of the commission, allowing commissions or the legislature to create such rules/laws. Approved by Senate Governmental Accountability and Fiscal Oversight Committee 4/2/09.

Oklahoma HJR 1041 (Constitutional Amendment) ORIGINAL: Requires Senate confirmation of all judicial officers. AMENDED: Requires Senate confirmation of Workers Compensation judges only. Approved as amended by Senate Judiciary Committee 3/31/09.

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. Approved by House Rules Committee 4/2/09.

Qualifications and Terms: Newly Introduced
NONE

Qualifications and Terms: Floor and Committee Activity

Connecticut SB 535 Requires all judges attend annual training on computer crime, including information related to the use of computers with respect to child pornography. Approved by Joint Committee on Judiciary 3/31/09.


New Hampshire CACR 7 (Constitutional Amendment) Ends life appointments for all judicial officers and replaces with 4 year
terms and subject to popular elections. Voted Inexpedient to Legislate by House Judiciary Committee 3/24/09.

**Tennessee HB 563** Allows members of the ethics commission to hold or qualify for judicial office with no waiting period. Rejected by House State and Local Government Committee 3/31/09.

**Tennessee HB 730** Allows certain municipal judges to concurrently serve as municipal recorder and exempts certain municipal judges from certain annual continuing education requirements imposed on municipal judges. Approved by House Judiciary Committee 4/1/09.

**Texas HB 764** Prohibits judge who was reprimanded or censured or retire/resign while under investigation by the State Commission on Judicial Conduct from serving as a "visiting" judge. Requires visiting judges have served as a judge at least 96 months. Approved as amended by House Judiciary & Civil Jurisprudence Committee 3/30/09.

**Rule Making Authority: Newly Introduced**
NONE

**Rule Making Authority: Floor and Committee Activity**

**Connecticut HB 6252** AS AMENDED: Requires the Judicial Department establish employment standards for judicial marshals and make such employment standards publicly available on the judiciary web site. Provides that only those motor vehicle infractions and violations and misdemeanor offenses committed in the prior five years may be considered in evaluating people to serve as marshals. Approved as amended Joint Committee on Judiciary 4/3/09.

**Connecticut HB 6340** Changes process of General Assembly review of proposed court rules revisions. Extends Judicial Selection Commission's power to include review of judicial referee's seeking reappointment. Requires Commission release names of qualified candidates for the position of associate judge or Chief Justice of the Supreme Court and keep confidential names for all other judicial vacancies. Requires number of votes for and against appointment or reappointment of an incumbent judge to the same or a different court be public. Requires Judicial Review Council give notice of the time and place of its meetings, and make the agendas public (except for personally identifiable information that might identify respondents). Requires all admonishments be made public. Requires, with limited exceptions, the entire record of any investigation by the Council be open for public inspection. Allows Council to impose civil penalties of up to $10,000. Sets terms of the Chief Court Administrator and Probate Court Administrator as coterminous with the term of the appointing Chief Justice. Specifically defines "administrative functions" of the courts for purposes of open records requests. Requires judiciary make criminal docket of the Superior Court, including the docket number, name of the defendant, year of birth of the defendant and charge, and conviction information available to the public on its Internet web site. Makes any police report submitted to demonstrate probable cause an open public record unless sealed by court. Grants three business days (rather than 72 hours) to appeal order
closing judicial proceedings or records. Approved by Joint Committee on Judiciary 3/31/09.

**Connecticut HB 6710** Authorizes the Chief Justice or Chief Court Administrator to take "any action necessary" to ensure operation of the state courts in an emergency. Authorizes e-filing of various documents. Increases to $2 million the dollar limit of projects for the alteration, repair or addition to Judicial Branch facilities that remain under the control of the Judicial Branch. Approved by Joint Committee on Judiciary 3/31/09.

**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 or order the conducting of courts outside their normal county, extend statutes of limitations, etc. Approved by Senate Judiciary Committee 4/1/09.

**Minnesota HB 1268** Authorizes judiciary and other branches to use space under its control to offer fitness, wellness, or similar classes or activities to its employees, and may allow persons conducting these classes or activities to charge employees a fee to participate. Approved by House State and Local Government Operations Reform, Technology and Elections Committee 4/2/09.

**New Hampshire HB 104** Repeals authority of supreme court to establish a business and commercial dispute docket in the superior court. Voted Inexpedient to Legislate by House Judiciary Committee 3/24/09.

### Structure Changes: Newly Introduced

**North Carolina HB 962** Specifically allows the Chief Justice, in times of severe financial difficulty, to temporarily suspending rotation of superior court judges in a district as a cost-saving measure so long as rotation is resumed as soon as practicable in order to honor the constitutional mandate to observe the principle of rotation. In House State Government/State Personnel Committee.

**Pennsylvania HB 1131** Authorizes the establishment of problem solving court, including, but not limited to, drug courts, mental health courts and driving under the influence courts, in all courts of common pleas and the municipal court of Philadelphia. In House Judiciary Committee.

### Structure Changes: Floor and Committee Activity

**Connecticut HB 6027** AS AMENDED: Restructures state's probate court system. Replaces the existing compensation structure for probate judges, which is based on probate court revenue, with a compensation structure based on probate district population and probate court workload. Establishes regional planning committees to explore opportunities for voluntary probate court consolidations. Establishes a probate appellate docket in the probate court system. Appropriates funds to pay for a portion of indigency expenses and the cost of health insurance for retired probate judges and staff when the Probate
Court Administration Fund has been exhausted. Approved as amended by Joint Committee on Judiciary 4/1/09.

**Connecticut HB 6385** Deletes all existing probate district boundaries and makes new probate court districts the same as state senatorial districts. Requires probate judges have been admitted to the Connecticut bar at least 10 years. Directs Probate Court Administrator establish and maintain a budget for the probate court system and allocate the budgets for each court based upon the weighted workload of the court. Directs Probate Court Administrator ensure that all staff, including judges, who are offered insurance or retirement benefits work a minimum of twenty hours per week. Requires probate courts be open for business at least 40 hours a week (currently minimum of 20). Approved by Joint Committee on Judiciary 4/1/09.

**Connecticut HB 6708** Establishes a separate criminal docket for hearing criminal matters and providing diversionary services for defendants who have returned from service with the armed services, similar to the criminal docket for matters in which a defendant is a drug-dependent person. Approved by Joint Committee on Judiciary 3/31/09.

**Illinois HB 4212** Permits the Chief Judge of a judicial circuit to establish a military and veterans court program. Excludes from the program certain specified veteran or active duty service members. Approved by full House 4/2/09.

**Indiana HB 1703** 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 cases 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 as amended by Senate Judiciary Committee 4/2/09.

**Oklahoma HB 1741** Authorizes district court to establish a family drug court for the purpose of treating children adjudicated as deprived and their families in cases where the parent, parents or legal guardian has a substance abuse disorder. Approved by full Senate Appropriations Committee 4/2/09.

**Tennessee HB 1405** Creates a city court to be administered and presided over by a city judge instead of authorizing the council in a modified city manager-council charter by ordinance to establish and provide for the administration of a city court. Approved by House Civil Practice and Procedure Committee 3/31/09.

**Tennessee HB 2015** Creates a municipal court for any municipality that does not have such a court established by the general assembly. Approved by House Civil Practice and Procedure Committee 3/31/09.
Texas HB 3595 The bill would authorize the presiding judges of the administrative judicial regions, after conferring with the judges of courts in their regions with a county population of not more than 200,000, to appoint one or more full-time or part-time associate judges to operate a drug court program. Approved by Senate Corrections Committee 4/2/09.

Jurisdiction: Newly Introduced

Maine SB 498 Prohibits a court when interpreting a statute or rule in a civil or criminal proceeding from giving any deference to a state department's or agency's interpretation of the statute or rule. In Senate Judiciary Committee.

Jurisdiction: Floor and Committee Activity

Utah SB 176 Increases small claims court jurisdiction to $10,000. Senate concurs in House amendments 3/12/09. To Governor for approval.

Salary and Budget: Newly Introduced

Minnesota SB 2018 Imposes per-page filing fees for court papers by district court administrators. Increases various court fees and the criminal and traffic surcharge. Establishes a court and public defender account for distribution to the supreme court, civil legal services, court of appeals, district courts and board of public defense. Increases conciliation court (small claims) civil claim limit to $15,000 or $7,500 if the claim involves a consumer credit transaction. In Senate Finance Committee.

Missouri HB 482 Allows municipal courts to create an appointed counsel fund to pay the reasonable attorney fees of an attorney appointed to represent certain defendants who are indigent and unable to pay for legal representation. In House Judiciary Committee.

Missouri HJR 42 (Constitutional Amendment) Requires separate salary recommendations for elected officials, judges, and members of the General Assembly. In House (no committee).

New York AB 7316 Provides for annual increase in the compensation paid to the judges and justices of the unified court system and New York City housing judges. Establishes commissions to annually determine the compensation payable to the judges and justices of the unified court system. In Assembly Judiciary Committee.

South Carolina HB 3832 Requires magistrates who are attorneys to be paid at least 55% of the salary of a circuit court judge, regardless of the population of the county they serve or their years of service. In House Committee on Ways and Means.

Salary and Budget: Floor and Committee Activity

Arkansas SB 190 Encourages judicial service and retention through retirement program incentives. Approved by full House 3/30/09. To Governor for approval.

Arkansas SB 801 Creates a task force to study the funding of the state judiciary. Approved by full House 3/30/09. To Governor for approval.
Delaware SB 37 Repeals requirement that fees chargeable in the Justice of the Peace Court be set by statute. Approved by Senate Judiciary Committee 4/1/09.

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. Approved by full Senate 4/2/09.

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. Approved by full Senate 4/2/09.

Minnesota HB 1827 Deletes provision allowing retired justice temporarily called back into service to receive full retirement pay and temporary salary. Alters numerous fees, fines and costs. Approved by House Public Safety Policy and Oversight Committee 3/30/09.

Minnesota SB 1627 Deletes provision allowing retired justice temporarily called back into service to receive full retirement pay and temporary salary. Alters numerous fees, fines and costs. Approved by Senate Judiciary Committee 4/1/09.

Oklahoma SB 1061 Permits the governing body of a municipality to enter into a contract with a debt collection agency to collect court debts. Approved by House General Government Committee 3/30/09.

Oregon SB 93 Allows State Court Administrator to enter into intergovernmental agreement with United States Financial Management Service and Internal Revenue Service for purpose of offsetting federal tax refunds to collect liquidated and delinquent accounts of state courts and commissions, departments and divisions in judicial branch. Approved by Senate Judiciary Committee 3/30/09.

Other: Newly Introduced

Ohio HB 103 Increases the penalties for certain offenses when a judge or magistrate is the victim. Prohibits a person from threatening a judge or magistrate. Makes the killing of a judge or magistrate an aggravating circumstance for the imposition of the death penalty for aggravated murder. In House Judiciary Committee.

South Carolina HB 3844 Requires county governments provide all probate judges necessary office equipment, books, office space, and personnel. Provides that the judges of the probate court have absolute control over the listed matters, including use of budgeted funds, employee classifications, compensation, and promotion. In House Committee on Judiciary.

Other: Floor and Committee Activity

Georgia SR 632 Declares, in part, that any "Judicial Order by the Judicatories 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." Approved by Senate Rules Committee 3/30/09. Approved by full Senate 4/1/09.

**Illinois SB 1582** Restricts the disclosure of the residence address and telephone number of judges and candidates for judge. Approved by full Senate 3/31/09.

**North Carolina HB 473** Permits magistrates to carry guns into courthouses. Approved by full House 3/30/09.

**Tennessee SB 1711** Adds former municipal court judges to eligibility list for judiciary registration plates. Approved by full Senate 4/2/09.

**Texas HB 890** Changes use of the term of office of judicial "master" to "associate judge". Approved by House Public Health Committee 3/31/09.

**Texas HB 1118** Requires appointment of administrative judge for drug court programs by the governor with senate confirmation. Specifies powers/duties of administrative judge for drug court programs. Approved by House Corrections Committee 4/2/09.

**Texas SB 1259** Allows clerks of the appellate courts to destroy paper documents held or stored electronically. Approved by Senate Judiciary Committee 3/30/09.

**Texas SB 1651** Extends state indemnification and defense to current or former appointee of the supreme court to a judicial board, commission, or task force. Approved by Senate State Affairs Committee 3/31/09.

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