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109TH CONGRESS *2nd Session*	SENATE	REPORT 109–316

TO PRESERVE EXISTING JUDGESHIPS ON THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 2068

TO PRESERVE EXISTING JUDGESHIPS ON THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

JULY 31, 2006.—Ordered to be printed

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TO PRESERVE EXISTING JUDGESHIPS ON THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

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Ms. COLLINS, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 2068]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2068) to preserve existing judgeships on the Superior Court of the District of Columbia, having considered the same reports favorably thereon without amendment and recommends that the bill do pass.

I. PURPOSE AND SUMMARY

The purpose of S. 2068 is to preserve existing judgeships within the Superior Court of the District of Columbia inadvertently impacted by the 107th Congress under the Family Court Act of 2001.

II. BACKGROUND

DISTRICT OF COLUMBIA LOCAL COURT SYSTEM

The local District of Columbia Courts consist of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals. The District of Columbia Courts constitute the Judicial Branch of the District of Columbia and they are separate and distinct from the legislative and executive branches of the District of Columbia.[1] The District of Columbia court system is overseen by Congress and funded by the federal government.[2]

[1] See D.C. Code Section 1–204.31 (2003); 2002 Annual Report of the District of Columbia Courts, p. 11.

[2] For a history of the District of Columbia court system, see Senate Report No. 107–108, Appendix.

Judges on both the District of Columbia Court of Appeals and the Superior Court are selected through a process that includes the involvement of both local and federal entities. When a vacancy occurs on the Court, notice is sent to the District of Columbia Judicial Nominations Commission, a District of Columbia agency composed of seven members.[3] The Judicial Nominations Commission solicits applicants for the vacancy, conducts an investigation and review of each applicant and selects three possible candidates to fill the vacancy. The names of those three candidates are sent to the President, who then selects one of the names to fill the vacancy on the Court. Once the nomination is made, it is sent to the Senate for confirmation.[4]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

The Superior Court of the District of Columbia is the local trial court of general jurisdiction in the District of Columbia.[5] It consists of six divisions including civil, criminal, probate, social services, and the Family Court. The last major reform of the District of Columbia Courts occurred in 2002. On January 8, 2002, President Bush signed into law the District of Columbia Family Court Act of 2001.[6] The purpose of that Act was to restructure the then-family division of the Superior Court into a new Family Court. The Act was intended to promote the efficiency and consistency in the assignment of judges to the family Court, improve the handling of cases involving families and neglected children, and help recruit and retain experienced judges to serve in the Family Court.[7]

Section 11–903 of the District of Columbia Code establishes an overall limit on the number of judges that may be seated on the Superior Court. The current limit is 58 in addition to a chief judge. Section 3(a) of the Family Court Act, among other things, allows the limit to be exceeded to appoint additional Family judges if the number of judges in the Family Court is less than 15 and if certain other conditions are met.[8] Section 3(b) of the Act required the Court to complete a transition plan and submit it to Congress within 90 days of enactment. Section 3(c) of the Act required that the transition plan include an analysis of the number of judges then sitting on the Family Court. In addition, section 3(c) required that, should the number of judges in the Family Court be less than 15, then a corresponding number of vacancies would be created on the Court.

On April 5, 2002, the chief judge submitted to Congress the required transition plan. The plan determined that the number of judges qualified and willing to serve on the Family Court was 12 and, therefore, pursuant to the Family Court Act, three new vacancies were created on the Family Court, notwithstanding the overall

[3] See D.C. Code section 1–204.34 (2003) (One member is appointed by the President, two members are appointed by the Board of Governors of the unified District of Columbia Bar, two members are appointed by the Major, one member is appointed by the D.C. Council, one member is appointed by the chief judge of the U.S. District Court for the District of Columbia.

[4] D.C. Code section 1–203.33 (2003).

[5] D.C. Code section 1–204.31 (2003).

[6] Public Law No. 107–114.

[7] See Senate Report No. 107–108.

[8] These other requirements include: (1) there are no other judges already on the Court who are willing to volunteer for a transfer into the Family Court from another division, (2) the chief judge obtains permission from the Joint Committee on Judicial Administration with the Court, and (3) the chief judge reports to Congress on the need to exceed the cap.

limit to the number of judges on the Superior Court in section 11–903 of the District of Columbia Code.[9] As a result, the nomination process was triggered and on January 21, 2003 the President nominated Judith Nan Macaluso, Jerry Stewart Byrd, and Joseph Michael Ryan III to fill the three newly created Family Court seats. Those nominations were referred to the then Senate Governmental Affairs Committee, as the committee of jurisdiction over the District of Columbia Courts.

THE PROBLEM AND NEED FOR LEGISLATION

Prior to the nominations of the three Family Court nominees, the Committee had also received the nomination of Fern Flanagan Saddler. As with most DC Court nominations, she was nominated to fill a vacancy created by a retired judge, Judge Patricia Wynn, and was not designated for a particular division. Later in the year, the Committee received the nominations of Brian F. Holeman and Craig S. Iscoe to be Superior Court judges to fill vacancies created by retired judges Mary Ellen Abrecht and Frederick D. Dorsey, respectively. On June 26, 2003, the Committee favorably reported the nominations of Fern Saddler and Judith Nan Macaluso to the full Senate and on June 27, 2003, both were confirmed.

Subsequently, the Committee learned that with the confirmation of Judges Macaluso and Saddler, the Court only had two open seats due to the overall limit on the number of judges; however, there were four nominations still pending in the Committee. If all four of those nominations had involved judges not specifically designated to serve on the Family Court, the limit on the number of judges in section 11–903 would have permitted only two of the four nominated individuals to serve on the Court, even if the Senate confirmed all four. While the Family Court Act resulted in creating three new seats on the Court, that Act failed to account for the new seats in the overall limit outlined in section 11–903. In addition, while the four nominations were still pending in Committee, on September 25, 2003, the Committee received the additional nomination of Gregory E. Jackson to fill the seat of retired judge Mildred M. Edwards.

In response to this problem, Chairman Collins, along with Senators Voinovich and Durbin, Chairman and Ranking Member of the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, introduced S. 1561 in the 108th Congress to amend section 11–903 (an identical bill was subsequently reintroduced as S. 2068 in the 109th Congress). In addition, the Committee determined that it would move forward with the nominations of Joseph Michael Ryan III, Jerry Stewart Byrd, Brian F. Holeman, and Craig S. Iscoe. The Family Court Act provides an exception to section 11–903 to allow Family Court judges to be seated notwithstanding the limit. Therefore, the Committee determined that if Brian F. Holeman and Craig S. Iscoe were confirmed prior to the confirmations of Joseph Michael Ryan III and Jerry Stewart Byrd, the Family Court nominees, all four could be seated as judges, notwithstanding the fact that there were only two vacancies on the Court. Once the Holeman and Iscoe nominations were confirmed, there were no more seats remaining

[9] District of Columbia Family Court Transition Plan, April 5, 2002, p. 30.

on the Court; however, because of the exception in the Family Court Act, the Court could exceed the section 11–903 limit to seat the two Family Court judges, Ryan and Byrd.

On October 22, 2003, the Committee favorably reported the four nominations to the full Senate and on October 24, 2003, the Senate confirmed first the nominations of Brian F. Holeman and Craig S. Iscoe and then, on the same day, confirmed the nominations of Joseph Michael Ryan III and Jerry Stewart Byrd. However, Gregory E. Jackson was not able to be confirmed until November 21, 2004 when an additional vacancy was created due to the retirement of an additional Superior Court judge.

On February 14, 2005, the Committee received the nomination of Jennifer M. Anderson to be Associate Judge, D.C. Superior Court. On November 10, 2005, the Committee received the nomination of Carol A. Dalton to serve on the Superior Court; and on January 26, 2006, the Committee received the nomination of Pamela S. Gray, also to serve on the Superior Court. The Committee has been unable to process the nominations of Dalton and Gray since no vacancies exist on the Superior Court. On July 11, 2006, the Committee was able to schedule the confirmation for Anderson due to the nomination of Justice Anna Blackburne-Rigsby to be Associate Judge of the District of Columbia Court of Appeals.

In addition, should section 11–903 not be amended, the result may be a permanent decrease in the number of judges serving in the non-Family Court divisions of the Superior Court, including civil and criminal, as other judges decide to retire. In 2002, when the Family Court Act of 2001 went into effect, the civil division of the Superior Court had nearly 98,000 cases available for disposition, while the Family Court boasted only 38,000.[10] Of this 98,000 from the civil division, only 88,123 were actually disposed, and just under 14,000 were disposed from Family Court.[11] Three years later, the situation is quite similar, even in the wake of 3 additional judges being assigned to the Family Court division. In 2005, the civil division and Family Court division saw clearance rates of 97% and 87% respectively.[12] And while 97% and 87% may seem impressive, given the large scale for which the courts operate on, a 97% clearance rate for the civil division has resulted in a case backlog of over 2,400. The subsequent pending case load of 87% for the Family Court has resulted in a backlog of over 1,600 cases. Overall, percentage dispositions for the Superior Court are falling, and the result is a continual increase in pending cases for each subsequent year. In 2003, the District of Columbia had over 5,900 felony case filings for 100,000 population, the third highest in the nation.[13]

The detrimental effect on various Superior Court divisions is evident by the increase in pending case loads as well as the decrease in total cases disposed. S. 2068 would address both of these issues by increasing the number of associate judges from 58 to 61, in an effort to dispose more cases and lessen pending case loads for Superior Court divisions.

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[10] 2002 Annual Report of the District of Columbia Courts.
[11] 2005 Annual Report of the District of Columbia Courts.
[12] 2005 Annual Report of the District of Columbia Courts.
[13] Examining the Work of State Courts, 2004, Criminal Statistics.

III. Legislative History

S. 1561 was introduced on August 1, 2003 by Senators Collins, Voinovich, and Durbin. The legislation was referred to the then Committee on Governmental Affairs, and subsequently referred to the Subcommittee on Government Management, the Workforce, and the District of Columbia. The bill was favorably polled by the subcommittee on October 15, 2003, and on October 22, 2003, the Committee ordered the bill favorably reported by voice vote. On November 20, 2003, the bill passed the Senate unanimous consent, and was referred to the House Committee on Government Reform on November 21, 2003. No further action was taken on the legislation during the 108th Congress.

The legislation was reintroduced by Senators Collins, Voinovich, and Akaka on November 18, 2005, and was referred to the Committee on Homeland Security and Governmental Affairs on the same date. On January 27, 2006, S. 2068 was referred to the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, which favorably polled the legislation on April 21, 2006. Senator Lieberman cosponsored the bill on June 13, 2006. On June 15, 2006, the Committee considered S. 2068 and ordered the bill reported favorably by voice vote without amendment. Members present were Senators Collins, Voinovich, Coleman, Coburn, Chafee, Bennett, Lieberman, Carper, Dayton, and Pryor.

IV. Section-by-Section Analysis

Section 1 amends section 11–903 of the District of Columbia Code to increase the limit on the number of judges on the Superior Court of the District of Columbia from 58 to 61.

V. Estimated Cost of the Legislation

JUNE 16, 2006.

Hon. SUSAN M. COLLINS,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2068, a bill to preserve existing judgeships on the Superior Court of the District of Columbia.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

S. 2068—A bill to preserve existing judgeships on the Superior Court of the District of Columbia

S. 2068 would amend the District of Columbia Code to increase the number of associate judges on the Superior Court of the District of Columbia from 58 to 61. Under current law, the Superior Court is subject to a cap of 58 judgeships. Based on information from the Superior Court, CBO estimates that increasing the cap on

judgeships to 61 would cost about $1 million a year for salaries and benefits of additional judges and support staff, subject to appropriation of the necessary amounts. Enacting the bill would not affect direct spending or revenues.

S. 2068 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandate Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VI. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. CBO states that there are no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and no costs on state, local, or tribal governments. The legislation contains no other regulatory impact.

VII. Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic and existing law, in which no change is proposed, is shown in roman):

DISTRICT OF COLUMBIA CODE

TITLE 11, ORGANIZATION AND JURISDICTION OF THE COURTS

CHAPTER 9. SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

§11–903. Composition

The Superior Court of the District of Columbia shall consist of a chief judge and [fifty-eight] *61* associate judges.

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