

# Gavel to Gavel

A review of state legislation affecting the courts

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## *Focus: JAIL4Judges and similar efforts*

One of the biggest recent challenges to the fairness and impartiality of the nation's state courts was South Dakota's Amendment E, the JAIL4Judges Amendment, which would have given a "special grand jury" the power to permit civil suits against the personal assets of judges and in the most extreme of cases their imprisonment. Pushed mainly by disgruntled litigants, it failed at the ballot box, receiving only 11% of the vote. The effort to seek personal damages from judges for decisions which angered one party in a suit has not ended and in fact appears to be strengthening.

Despite their loss in November 2006 (which they claim was based on vote fraud), Amendment E sponsor Bill Stegmeier [has vowed to return in 2008](#), "And next time, thanks to the lessons we have learned, our new Judicial Accountability Amendment will be bulletproof. And for good measure, we will also put on the ballot an amendment to outlaw computerized vote counting. And just because they have peeved us off, how about an amendment to require judges to inform the jury it has the right to judge the

law as well as the accused's guilt or innocence? I think so!"

Stegmeier is also a boardmember of the "Liberty Initiatives Group" which is trying to get a "[Colorado Judicial Accountability Act](#)" on the 2008 ballot. Details of the Colorado initiative have not yet been released.

Florida's JAIL4Judges branch is working with their national leadership to [modify certain portions](#) of what appeared on the ballot in South Dakota and make their attempt to get onto the 2008 ballot. They have [already begun signature gathering](#) and will begin to hold [rallies starting in March](#).

JAIL4Judges is not the only group seeking to make judicial officers subject to personal civil suits and imprisonment for their decisions. North Dakota's [Family Law Reform Initiative](#) (FLRI) would subject all judges "who knowingly promote[] false or frivolous claims of domestic abuse" to automatic disbarment. In visitation/support cases, courts that "deliberately refuse" to enforce orders to the liking of one of the parties "shall enjoy no immunity from either prosecution or civil suit." In addition, the initiative would retroactively reopen all domestic cases involving divorce, families



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Research Division

NATIONAL CENTER FOR STATE COURTS  
300 Newport Avenue, Williamsburg, VA 23185  
Phone (800) 616-6109 Fax (757) 564-2022  
Editor's Email: [wraftery@ncsc.dni.us](mailto:wraftery@ncsc.dni.us)  
Subscribe: [gaveltogavel@ncsc.dni.us](mailto:gaveltogavel@ncsc.dni.us)

Online: [http://www.ncsconline.org/D\\_Research/gaveltogavel/](http://www.ncsconline.org/D_Research/gaveltogavel/)



or children decided in the last 10 years and require they be retried before juries. FLRI's main proponent has stated he has at least [4,000 of the 12,844 signatures needed](#) to get it on the ballot for 2008.

Arizona's [C-02-2008](#) initiative would automatically suspend without pay any "judicial officer" (including "hearing officers for agencies") who is accused by any party in a case of misconduct and require a full jury trial within 72 hours of the filing of the accusations. If there is "some evidence" that the allegations may be true, the judicial officer shall be found Guilty", automatically removed from office and disbarred. Conviction requires only 7 of 12 jurors find "some evidence" and includes punitive damage provisions against the judicial officer's personal assets. Like Amendment E and FLRI, the initiative is retroactive (to 1980).

In California, [Initiative 06-0036](#), called the "Public Agency Accountability" initiative would reopen any claim against a "public entity", including courts and judges, for actions since 1980. It would also void all "vexious litigant" findings made by California courts. Like the Arizona initiative, plaintiffs need only show "some evidence" to succeed in their claims.

While these efforts are initiative based, many are coming in the form of legislation as well. Indiana's [HB 1512 of 2005](#) would have changed the presumptions regarding joint legal and physical custody and other similar issues. Any judge that "fails to comply" with the new presumptions "commits official misconduct and: (1) is not entitled to judicial immunity; and (2) may not be represented at the state's expense in an action against the judge for official

misconduct." The bill was referred to the House Judiciary committee and died.

West Virginia's [HB 3140 of 2005](#) would have found that "For municipal judges of Class I municipalities having a population in excess of forty-eight thousand people, there is no judicial immunity." In bench trials before those particular judges reviewed on appeal, if the judge's decision is overturned he or she "is personally liable to the defendant for one hundred dollars...and shall in all events be paid from the personal funds of that judge. The judge may not be reimbursed by the municipality..." The bill was referred to the House Political Subdivisions committee and died.

Connecticut's [HB 6289 of 2007](#), which copies portions of the [JAIL4Judges ballot language](#), would create an inspector general for the judiciary with the power to convene a grand jury at any time against any judge. The IG could personally "grant the writ of habeas corpus in the same manner as the Supreme and District courts" and could require judges "state an authority of law for which the judgment should be based, in particular order(s) for denial or dismissal if no written finding was available." The IG's grand jury "shall be granted powers of jury nullification and have the right to take it upon themselves to judge the law as applied ethically and constitutionally by a judge as well as the facts in controversy surrounding a judge's decision." It is currently in the Joint Committee on the Judiciary.

## *Newly Introduced*

### **Selection**

[NEW MEXICO SB 799 \(2007\)](#) Public financing of all statewide campaigns, including Supreme Court and Court of Appeals. Judicial candidates must collect \$5 contributions from one-tenth of one percent of all voters in the state. In Senate Rules, Senate Finance and Senate Judiciary committees

[TENNESSEE HB 302 \(2007\)](#) Requires the popular election of all supreme court and intermediate appellate court judges. In House Judiciary committee

[TENNESSEE HB 395 \(2007\)](#) Clarifies that if the elected successor to a judicial office becomes ineligible to serve prior to September 1 due to death or other reason, a vacancy exists in that position. In House Judiciary committee

[TENNESSEE HB 566 \(2007\)](#) (See [TENNESSEE SB 539](#)) In House Judiciary committee

[TENNESSEE HB 827 \(2007\)](#) Extends the time period for the judicial selection commission to submit a roster of candidates to the governor from 60 to 75 days; removes the automatic termination of the judicial selection commission and judicial evaluation commission pursuant to governmental entity review. In House Judiciary committee

[TENNESSEE SB 338 \(2007\)](#) Changes composition of the judicial selection commission; makes all meetings and records of the commission open to the public; requires judicial applicants to submit to

work and credit history checks and to submit to criminal record checks; requires that certain judges be elected by voters within the respective grand divisions of the state. In Senate Judiciary committee

[TENNESSEE SB 355 \(2007\)](#) (See [TENNESSEE HB 302](#)) In Senate Judiciary committee

[TENNESSEE SB 391 \(2007\)](#) Requires all appellate judges to run for election or re-election every eight years; deletes the present process by which appellate judges are retained in office through a "Yes / No" vote only. (See [TENNESSEE HB 127](#)) In Senate Judiciary committee

[TENNESSEE SB 539 \(2007\)](#) Institutes popular elections for supreme court justices and all appellate judges. Abolishes the Tennessee plan of judicial selection. Enacts "Tennessee Judicial Public Campaign Financing Act", providing public financing for appellate court races. In Senate Judiciary committee

[TENNESSEE SB 474 \(2007\)](#) (see [TENNESSEE HB 827](#)) In Senate Judiciary committee

[TENNESSEE SB 788 \(2007\)](#) Requires judicial selection committee to hold selection meetings in public; requires committee to rate all applicants rather than submit three nominees to governor. In Senate Judiciary committee

[TENNESSEE SB 926 \(2007\)](#) (See [TENNESSEE HB 395](#)) In Senate Judiciary committee

[WASHINGTON HJR 4214 \(2007\)](#) Requires that where there are only two candidates for

judicial office, the race will be held at the general election in November and not on primary day. In House State Government & Tribal Affairs committee

## Qualifications and Terms

[ARIZONA SCR 1020 \(2007\)](#) Raises mandatory retirement age for judges from 70 to 75. In Senate Judiciary committee

[TENNESSEE HB 918 \(2007\)](#) Requires judges of the court of appeals and court of criminal appeals to be licensed to practice law in Tennessee for at least five years prior to qualification for election. In House Judiciary committee

[VIRGINIA HB 1757 \(2007\)](#) Suspends the residency requirement for a sitting judge who resides upon property that is located contiguous to his respective circuit. Tabled in House Courts of Justice committee

[VIRGINIA SB 977 \(2007\)](#) Increases mandatory retirement age for judges from 70 to 75. Unanimously approved by Senate Finance committee, unanimously approved by Senate, in House Courts of Justice committee.

## Rule Making Authority

[COLORADO HB 1227 \(2007\)](#) Repeals the authority of the Supreme Court to approve the rules of the State Commission on Judicial Performance. Repeals the authority of the Chief Justice to appoint members of Judicial Performance Commissions. Increases the number of members appointed by the Speaker of the House of Representatives, the President of the Senate, and the Governor. Encourages DAs, public defenders and chief judges to file judicial

evaluation reports with judicial performance commissions and specifies what such assessments are to contain. Requires district judicial performance commissions to accept any such judicial evaluation report filed and that a summary of such reports be made public. Requires the retention recommendation made by the commission be placed next to the judicial candidate's name on the ballot. Requires the state commission evaluate every Supreme Court justice five years after retention election and Court of Appeals judge every four years after retention election. Requires commission appropriations appear as a separate line item in the general appropriations bills. Authorizes the state commission to solicit donations to pay for costs to make information more widely available. In House Judiciary committee

[WEST VIRGINIA HB 2789 \(2007\)](#) Authorizing the Supreme Court of Appeals to create a panel of senior status magistrate assistants. House Judiciary voted Do Pass recommendation.

## Structure Changes

[MARYLAND SB 508 \(2007\)](#) Creates medical liability divisions in the circuit courts and requires judges assigned have specialized training. Creation of such divisions to be in courts where deemed feasible by the Chief Judge of the Court of Appeals. In Senate Judicial Proceedings committee

[PENNSYLVANIA HB 267 \(2007\)](#) Creates the Medical Professional Liability Court with jurisdiction over of all civil actions against a health care provider for all medical professional liability claims. In House Judiciary committee

## Jurisdiction

[ARIZONA SCR 1026 \(2007\)](#) Removes jurisdiction from all courts to hear cases “concerning the government's or the officer's or agent's acknowledgement of God as the sovereign source of law, liberty or government.” In Senate Judiciary committee

[ARKANSAS HB 1384 \(2007\)](#) Permits District Court concurrent jurisdiction over eviction proceedings (currently, only circuit court has jurisdiction). In House Judiciary committee for hearing on 2/8/07.

[HAWAII SB 1323 \(2007\)](#) Supreme Court to hear challenges to proposed constitutional amendments based on procedures use to propose the amendment, language or wording of the proposed amendment etc. Supreme Court must render decision within thirty days of filing. In Senate Judiciary and Labor committee

[SOUTH DAKOTA HB 1091 \(2007\)](#) Permits magistrate courts to administer adult probationary drug court programs. Passed House Judiciary unanimously, passed House unanimously, in Senate Judiciary committee.

[VERMONT H 197 \(2007\)](#) Increases small claims jurisdiction to \$5,000 from \$3,500. No committee assigned yet

[VIRGINIA SJ 418 \(2007\)](#) Establishes a joint committee of the Senate Committee for Courts of Justice and the House Committee for Courts of Justice to study redistricting the judicial circuits. Unanimously approved with amendment by Senate Rules committee, unanimously approved by Senate, no House committee yet assigned.

## Salary and Budget

[ARKANSAS SB 90 \(2007\)](#) Transfers state District Judge Retirement System to state's Public Employees Retirement System. Amended on floor and referred to Joint Committee on Public Retirement & Social Security Programs

[MISSOURI SB 426 \(2007\)](#) Authorizes the Supreme Court to direct the Judicial Finance Commission to consolidate its annual report on the finances of the judicial department with any annual report prepared by the Supreme Court or the Office of the State Courts Administrator. In Senate Judiciary and Civil & Criminal Jurisprudence committee

[NEW MEXICO HB 299 \(2007\)](#) Creates judicial performance evaluation fund under the control of the administrative office of the courts. Unanimously approved by House Judiciary committee and in House Appropriations & Finance committee.

[NEW MEXICO SB 567 \(2007\)](#) Appropriates \$200,000 to expanded state Judicial Education Center. Unanimously approved by Senate Judiciary and in Senate Finance committee.

[NORTH DAKOTA HB 1083 \(2007\)](#) Eliminates special electronic filing administration fund in treasury. Clerk of Supreme Court still permitted to charge and collect an electronic filing processing fee. Unanimously approved by House Appropriations, unanimously approved by House, no Senate committee assigned yet

[PENNSYLVANIA HB 117 \(2007\)](#) Judicial salary increases are not to be tied to Federal judicial salary increases. In House Judiciary committee

[UTAH SB 224 \(2007\)](#) Amends various provisions in law. Increases from \$1,000 to \$2,000 the additional compensation a presiding judge receives. Includes court commissioners in the definition of judge for the purpose of imposing penalties for persons who threaten, intimidate, or interfere with a commissioner, or who retaliate against a commissioner for the performance of the commissioner's official duties. Passed 6-0-1 in Senate Judiciary, Law Enforcement, and Criminal Justice Committee.

[VIRGINIA SB 1311 \(2007\)](#) Allows a judge who is at least 50 years old with at least 15 years of creditable service as a judge to retire upon expiration of his current term. Unanimously approved with amendment by Senate Appropriations committee, unanimously approved by Senate, in House Appropriations committee.

[WYOMING HB 20 \(2007\)](#) Compensation received by senior status judges when temporarily assigned to a case has no impact on retirement benefits received during that time. Unanimously approved in House Judiciary committee, unanimously approved by House Appropriations committee, unanimously approved by full House, unanimously approved by Senate Judiciary committee.

[WYOMING HB 109 \(2007\)](#) Creates judicial sabbaticals of up to 120 days every eight years for judges or justices that have served at least seven years and promise to serve after the sabbatical at least three more years. Program to be administered by the Supreme Court. Unanimously approved by House Judiciary committee, approved by House Appropriations committee 5-2, approved by

full House 54-4. No Senate committee assigned yet

[WYOMING SF 11 \(2007\)](#) Adjusts benefit and eligibility calculations for early judicial retirement. Unanimously approved by Senate Judiciary committee, unanimously approved by Senate Appropriations committee, amended on floor, failed on Senate floor 14-15.

[WYOMING SF 38 \(2007\)](#) Raises judicial salaries: Supreme Court justices to \$119,300; District Court judges to \$113,600; Circuit Court judges to \$93,200. Unanimously approved by Senate Judiciary committee, unanimously approved by Senate Appropriations committee, unanimously approved by full Senate, unanimously approved by House Judiciary committee, unanimously approved by House Appropriations committee.

## Other

[ARKANSAS SB 172 \(2007\)](#) Permits Justices of the Peace to solemnize marriages anywhere in the state. Passed Senate committee and full Senate. Passed House City, County and Local Affairs committee.

[IOWA HF 215 \(2007\)](#) Established commission to review implementation of the Iowa Supreme Court's Equality in courts Task Force. In House Judiciary committee

[MARYLAND HB 469 \(2007\)](#) Establishes a Task Force to Study Judicial Involvement with the Legislative Process to “study the issues that arise when the judicial branch of government becomes involved with legislative proposals; and identify

inappropriate interference.” In House Judiciary committee

[NEW MEXICO HB 350 \(2007\)](#) Creates Court of Appeals Building Commission. Unanimously approved by House Health and Government Affairs committee and in House Judiciary committee.

[RHODE ISLAND HB 5309 \(2007\)](#) Adds the State Court Administrator to the Emergency Management Advisory Council. In House Finance committee

[VIRGINIA SB 987 \(2007\)](#) **ORIGINALLY:** Adds the Chief Justice of the Supreme Court to the Secure Commonwealth Panel. **AMENDED:** Adds the Executive Secretary of the Supreme Court of Virginia to the Secure Commonwealth Panel. Unanimously approved with amendment by Senate Rules committee, unanimously approved by Senate, in House Rules committee.

## *Floor and Committee Activity*

A bill to clarify when a person takes judicial office has cleared the Idaho legislature and is on its way to the governor. [SB 1006](#) states that in cases where a person appointed to fill a district judge vacancy loses in the subsequent election, the winner takes office in January, not immediately after the election.

[HB 77](#) in Maryland has been rejected by that state’s House Judiciary committee. The legislation would have required judge of the Orphan’s Court have at least a J.D.

Montana’s House unanimously approved a bill to create city court of record, similar to

their existing city courts not of record. [HB 251](#) is now in the Senate.

Missouri’s [HJR 1](#) which would prohibit courts from instructing or ordering the levying or increase of taxes, or ordering how to spend, allocate, or budget fiscal resource, has been voted out of the House Special Committee on General Laws on a 4-3 vote.

Despite being rejected by New Mexico’s Voters and Elections Committee, [HJR 5](#) which would require a person appointed to fill a vacancy in judicial office serve at least one year before facing election was approved by the House Judiciary Committee.

Tennessee’s [HB 171](#) which would require appellate judges be elected from “grand divisions” and make other changes to judicial elections has been withdraw. However, at least seven other bills, many containing similar language to HB 171, were introduced last week (see Selection section above).

Utah’s [SB 211](#) has been reported favorably out of the Senate Judiciary, Law Enforcement, and Criminal Justice committee. The bill creates the Judicial Retention Election Task Force and requires a report on the value of the existing judicial evaluation program and any other matters relating to judicial retention elections.

Virginia’s [HB 2089](#) would have made the longest serving member of the commonwealth’s Supreme Court Chief Justice. The bill was voted down in the House Committee for Courts of Justice 7-13.

Washington State’s “Judicial Independence Act” [SB 5226](#) which would introduce a

voluntary pilot campaign funding system for all appellate judicial races has been amended by and voted out of Senate Committee on Government Operations & Elections. It is now on its way to Senate Ways and Means.

West Virginia's [SB 141](#) which grants jurisdiction over sibling visitation to Family Court, is on its way to the governor having passed that state's House.

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