

Gavel to Gavel

A review of state legislation affecting the courts

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Focus: Virginia and Utah

With the legislative sessions starting to wind down, *Gavel to Gavel* will shift its attention to examinations of individual states and how the courts of that state fared.

The first legislature to adjourn sine die was Virginia. Bills on their way to the Governor for his approval include:

[HB 2419](#) which requires that when a judicial officer is subpoenaed to appear in a proceeding, the subpoena must be signed by a judge.

[HB 2750](#) which expands capital murder to include the premeditated killing of a judge or justice for the purpose of interfering with their official duties.

[HB 1895](#) which requires judges departing from the sentence recommended by a jury or the commonwealth's discretionary sentencing guidelines report the departures to the Sentencing Commission.

[SB 987](#) which adds the Executive Secretary of Supreme Court of Virginia to the Secure Commonwealth Panel.

[SB 1082](#) which raises to \$10 the costs in each criminal or traffic cases dedicated to courthouse security.

[SB 1426](#) which grants the Supreme Court the power to adopt rules to assess a fee against all bar members for a dedicated Clients' Protection Fund.

A resolution not requiring the Governor's approval created a joint House and Senate committee to examine judicial districts. [SJ 418](#) requires the joint committee meet up to 4 times in 2007 and up to 4 more times in 2008 with recommendations due at the end of each set of meetings.

Two, one-chamber bills were also of note: [SB 997](#) would have increased the mandatory retirement age for judges from 70 to 75. Its author submitted the bill "[because many judges aren't ready to retire by age 70.](#)" A proposed committee amendment to remove the limit altogether failed because as the Senator in opposition put it "[I know some judges who are so committed to practice they'd never retire.](#)" [SB 1311](#) would have created a judicial early retirement system with judges over 50 years old with at least 15 years of creditable service to retire upon expiration of their current term without any reduction in the retirement allowance. In both cases, despite unanimous support in the Senate committees and by the full Senate, no action was taken in the House.



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Utah's legislature has also been busy, having concluded their session at midnight on February 28 with the following bills on their way to the Governor.

[SB 151](#) authorizes the creation of a case management project coordinator as a pilot project in one district. The coordinator must have a graduate degree in court administration or business or public administration supplemented with course work in case management. The program is set to sunset June 30, 2009.

[SB 224](#) amends a variety of laws pertaining to the judiciary and judicial proceedings. It increases from \$1,000 to \$2,000 the additional compensation a presiding judge receives. It 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.

One piece of legislation of particular note was [SB 221](#), which creates a Judicial Retention Election Task Force that is to examine the value of the state's formal judicial evaluation program and any other issue related to judicial selection procedures. The main proponent claimed on the Senate floor "[I would propose to you that all these \(Voter Information Pamphlets\) are is a personal advertising advertisement to 'Vote for me!'](#)" and specifically referenced a judge without naming her who failed to be retained in office in 2006. The proponent also called for notifying voters how many times judges have been overturned and perhaps dividing the pages half, with half a page dedicated to reasons against retaining the judge. The resolution passed the Senate

as amended. One of the most contentious issues was the naming of the judicial members to the Task Force. Originally, the judges were to be named "jointly by the president of the Senate and speaker of the House of Representatives", then "jointly by the president of the Senate, speaker of the House, and the Utah Judicial Council." A final amendment changed this further to "appointed by the president of the Senate and speaker of the House, in consultation with the Utah Judicial Council." It was initially rejected by the [House on a 35-39 vote](#), further amended, and ultimately approved. The Task Force has until November 30, 2007 to issue its report.

Newly Introduced

Selection

[GEORGIA SR 370 \(2007\)](#) Supreme Court Justices to be selected, one for each congressional district (this would result in the expansion of the court to 13 members from 7) in nonpartisan elections. No committee yet assigned

[IOWA HF 473 \(2007\)](#) Requires that each elected and appointed commissioner of a district judicial nominating commission be from a different county within the judicial election district unless each county within the judicial election district has an appointed commissioner and the number of appointed commissioners exceeds the number of counties within the judicial election district. In House Judiciary committee

[WEST VIRGINIA HB 3159 \(2007\)](#) Requires Justices of the Supreme Court of Appeals be elected from numbered divisions. Candidates from each numbered

division are to be voted on at large from the entire state. In House Judiciary committee

Qualifications and Terms

[WEST VIRGINIA HB 2120 \(2007\)](#) Sets minimum standards for municipal judges. Requires criminal background checks of persons applying for municipal judgeships. Excludes persons convicted of certain offenses from serving as municipal judge. Requires municipal judges receive continuing legal training. Passed House and Senate and on way to Governor for approval.

Rule Making Authority

[WASHINGTON SB 8221 \(2007\)](#) Provides that judges facing disciplinary action by the Commission on Judicial Conduct may compel discovery of all information generated in the investigation or analysis of the complaint that led to a probable cause determination. In Senate Judiciary committee

Structure Changes

[ARKANSAS SB 235 \(2007\)](#) Consolidates many City Courts into District Courts. Creates District Court Resource Assessment Board. Creates Pilot Program of full-time District Court judges that are employees of the state. Approved by full Senate with amendments, in House Judiciary committee

[OREGON SB 655 \(2007\)](#) Establishes the Medical Malpractice Court. In Senate Judiciary committee

Jurisdiction

[OKLAHOMA SB 990 \(2007\)](#) Creates the Judicial and District Attorney Redistricting Task Force. Approved by Senate Rules committee and before full Senate.

[WEST VIRGINIA HB 3106 \(2007\)](#) Realigns and resets family court circuits and adds family court judges. Approved by House Judiciary and Finances committees as amended and approved by full House. In Senate with no committee assigned yet.

Salary and Budget

[ARKANSAS HB 1715 \(2007\)](#) Increases from \$100 to \$150 filing fee for most actions in Supreme Court and Court of Appeals. Approved by House Judiciary committee and full House. In Senate Judiciary committee

[INDIANA HB 1480 \(2007\)](#) Allows a participant in the 1985 judges' retirement system to elect to make additional contributions after 22 years. Requires the pension management oversight commission to identify a way to harmonize the benefit structures of the 1977 and 1985 judges retirement systems. Modifies other pension provisions. Approved by House Ways and Means, amended on floor and passed by full House 94-1. In Senate with no committee assigned yet

[INDIANA SB 501 \(2007\)](#) Establishes a retirement medical benefits account for elected officers, appointed officers, and employees of the executive, legislative, and judicial branches of state government to pay participants' medical expenses after retirement. Amended and approved by Senate Appropriations and by full Senate. In House with no committee assigned yet

[NEVADA AB 166 \(2007\)](#) Allows the Court Administrator to create a separate account into which excess administrative assessments may be deposited without reversion to the state general fund and permits the money to be expended to pay for certain court-related expenses and programs. Allows assessments collected and deposited in a special account for special court programs unspent at the end of the fiscal year remain in the account and need not revert to the state's general fund. In Assembly Ways and Means committee

[WEST VIRGINIA SB 414 \(2007\)](#) Establishes a flat fee for certain services rendered by circuit clerks and eliminates other miscellaneous fees charged by circuit clerks. Authorizes circuit clerks to assess a fee for creating and administering certain special funds. Approved by full Senate as amended. Approved by House Judiciary committee with additional amendments.

[WISCONSIN AB 31 \(2007\)](#) Prohibits justices and judges from accumulating unused sick leave from year to year. Also applies to legislators and other state officials. Approved 5-2 by Assembly Labor and Industry Committee. Floor amended and adopted by full Assembly 66-29.

Other

[ARKANSAS SB 18 \(2007\)](#) Requires expansion of drug court programs, creates a division of drug court programs within the Administrative Office of the Courts and creates a Drug Court Advisory Committee. In Senate Judiciary committee

[TENNESSEE SJR 97 \(2007\)](#) Creates Special Joint Committee of the General Assembly to review and evaluate

administration, management, and operation of Tennessee's appellate court system and trial court system. Withdrawn by author.

[TEXAS HB 1828 \(2007\)](#) Requires courts to report the number of frivolous lawsuits filed each year. In House Judiciary committee

[TEXAS SB 57 \(2007\)](#) Places cases involving certain ad valorem tax matters on list of cases to be given priority by the trial courts. Amended and approved by Senate Jurisprudence committee

[WEST VIRGINIA SJR 10 \(2007\)](#) Provides that the offices, agencies, departments, and any and all entities of the executive, legislative and judicial branches of state government may be located anywhere in the state as provided by law. In Senate Judiciary committee

Floor and Committee Activity

[ARKANSAS SB 90 \(2007\)](#) Transfers state District Judge Retirement System to state's Public Employees Retirement System. Approved by House and Senate as amended and signed into law by Governor.

[ILLINOIS SB 222 \(2007\)](#) Creates a voluntary program of public financing of election campaigns for the Supreme Court and Appellate Courts, administered by the State Board of Elections. Candidates must receive donations between \$5 and \$25 from people equal to 0.15% of the number of ballots cast in the judicial district in the last gubernatorial election. Unanimously approved by Senate Local Government committee.

[KENTUCKY HB 465 \(2007\)](#) ORIGINAL: Extends indefinitely state's senior status judge program, set to sunset at end of 2007. AMENDED: Extends to December 31, 2012 program. Passed as amended by full House 88-8.

[KENTUCKY SB 153 \(2007\)](#) ORIGINAL: Creates minimum qualifications and training requirements for certified court security officers. AMENDED: Creates minimum qualifications and training requirements for certified court security officers. Specifically states sheriff is responsible for court security, and that upon the sheriff's failure or refusal, the Court of Justice is required to contract with a local government for court security services. Approved by Senate Judiciary committee as amended.

[MISSISSIPPI HB 1059 \(2007\)](#) Requires Supreme Court fund a pilot program case management and electronic filing system. Approved unanimously by Senate and on way to Governor for approval.

[MISSISSIPPI HB 1158 \(2007\)](#) ORIGINAL: Chief Justice to appoint for the Court of Appeals an Opinion Editor. AMENDED: Court of Appeals authorized to employ an Opinion Editor. Passed Senate unanimously and returned to House with Senate amendment.

[MONTANA HJ 43 \(2007\)](#) Authorizes committee to determine if there is adequate legislative oversight of the Judicial Branch of government and a variety of other matters pertaining to the judiciary. Passed House Judiciary committee 16-1.

[MONTANA SB 202 \(2007\)](#) Public financing for supreme court candidates.

Approved by full Senate 30-20. In House with no committee assigned yet.

[MONTANA SB 382 \(2007\)](#) Permits but does not require mental health courts in each judicial district. Approved by full Senate and in House with no committee yet assigned.

[MONTANA SB 523 \(2007\)](#) Changes the Workers' Compensation court into a court of record. Passed unanimously Senate Judiciary committee and unanimously full Senate. In House with no committee assigned yet.

[NEW HAMPSHIRE HB 245 \(2007\)](#) Creates a "common law court." Prohibits the judges of the court from being attorneys, plea bargaining or settlements, and requires a jury trial in every case. Voted down by House Judiciary committee.

[NEW MEXICO HJR 5 \(2007\)](#) Requires a person appointed to fill a vacancy in office serve at least one year before facing election. House Voters and Elections Committee recommended it Passed full House. In Senate Judiciary 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 Senate Judiciary committee and full Senate and on way to Governor for approval.

[NORTH DAKOTA HB 1097 \(2007\)](#) Reauthorizes the North Dakota Court of Appeals until 2012 (currently set to go defunct in January 1, 2008). Unanimously

approved by Senate. On way to Governor for approval.

[OKLAHOMA HJR 1042 \(2007\)](#) Increases from 1 to 3 members of the Judicial Nomination Commission elected by members of the state bar. Reduces from 12 to 10 commission members selected by Governor and requires they receive Senate confirmation. Amended and approved by House Rules committee.

[TEXAS HJR 36 \(2007\)](#) Permits a state justice or judge who reaches the mandatory age of retirement while in office to complete the justice's or judge's current term. Reported favorably by House Judiciary committee.

[WASHINGTON HB 1130 \(2007\)](#) Creates an office of public guardianship as an independent agency of the judiciary. Amended and passed House Appropriations

[WASHINGTON HB 1186 \(2007\)](#)
ORIGINAL: Public financing for appellate court races. Supreme Court candidates need 250 qualifying contributions, Court of Appeals 100, from residents. Candidates must attend at least two public debates. AMENDED: Six-year pilot program for public financing for appellate court races.

Supreme Court candidates need 500 qualifying contributions, Court of Appeals 100, from registered voters. Candidates must attend at least one public forum. Candidates that having opted into the program later remove themselves must pay a fine. Candidates who are part of the program and later are found to have violated its terms are subject to civil penalties and disqualification from the program. If there is no funding appropriated by June 30, 2007, bill and program and deemed null and void. Approved as amended by House Committee on State Government & Tribal Affairs committee and referred to House Appropriations committee.

[WASHINGTON HB 2150 \(2007\)](#) Creates merit selection process for Supreme Court and Court of Appeals vacancies. Bill is contingent on passage of a merit selection constitutional amendment. Passed Senate Judiciary committee with amendments and referred to Senate Rules committee.

[WASHINGTON SB 5353 \(2007\)](#) Permits cities to contract with other cities for the delivery of municipal court services. Requires municipal courts to exercise jurisdiction over traffic infractions. Amended and passed Senate Judiciary.

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