

Gavel to Gavel

A review of state legislation affecting the courts

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Focus: Indiana and South Dakota

Both Indiana and South Dakota wrapped up their 2008 regular session in mid-March with both legislatures addressing various court-related bills.

In Indiana:

[HB 1096](#) amended over a dozen statutes related to the courts, including adding judges to various courts as well as redrawing some of the state's judicial circuits. The bill also permits magistrates to enter final judgments in small claims and issue protective orders to prevent domestic or family violence proceedings. It eliminates references to the Clerk of the Supreme Court as an elective office (as of 2007, the Clerk is selected by the Chief Justice).

[SB 329](#) initially dealt only with an expansion to the state's 1985 judge's pension program to include full-time magistrates and to make other modifications to the program. However, once it reached the House [efforts were made to amend the bill](#) to do away with the merit selection system for judges in St. Joseph's County and

require they run in partisan elections. While the amendment failed [on a 45-49 vote](#), the final version of the bill that came out of a House/Senate conference committee directed the state's Commission on Courts to study the method of judicial selection for the county and report to the Legislature by November 1, 2008.

South Dakota's newly enacted statutes include:

[HB 1122](#) increases the jurisdiction for Magistrate's Court from \$10,000 to \$12,000 and Small Claims from \$8,000 to \$10,000.

[HB 1129](#) creates the Commission on Equal Access to Our Courts to provide grants to nonprofit entities that are funded by the Legal Services Corporation and that deliver legal services to persons meeting income eligibility guidelines. The law also specifies funding sources for the grants.

[SB 77](#) repeals the statutory prohibition on radio, television broadcasts, or photographs of judicial proceedings inside courtrooms.



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Selection: Newly Introduced

NONE

Selection: Floor and Committee Activity

[CONNECTICUT SB 448 \(2008\)](#) Directs State Elections Enforcement Commission to submit report on inclusion of Probate Judges in state's public campaign financing program. Report due January 1, 2009. Approved by Joint Committee on Government Administration and Elections

[ILLINOIS HCA 28 \(2008\)](#) ORIGINAL: Allows for recall of judges and other elected officials. AMENDED: Allows for recall of State executive branch officers and members of the General Assembly only. Amendment approved by House Rules Committee

[KANSAS HB 2642 \(2008\)](#) Grants Supreme Court and the Commission on Judicial Performance immunity from civil suit regarding judicial performance evaluations. Grants commission access to records that would otherwise not be publicly accessible. Senate approved conference committee report

[KANSAS HB 2799 \(2008\)](#) Creates Court of Appeals judicial nomination commission (currently, Supreme Court nomination commission selects names for Court of Appeals as well). Nominees to be selected by Governor from three names submitted but nominee is subject to Senate confirmation (Senate confirmation not currently required). Approved by House Federal and State Affairs committee

[KANSAS HCR 5031 \(2008\)](#) Requires Senate confirmation of candidates to

Supreme Court. (Senate confirmation not currently required). Changes membership of Supreme Court nominating commission: 3 names from Speaker of House, 3 from Senate President, 3 from Governor; 1 name from each appointing authority to be a bar member. Approved by House Federal and State Affairs committee

[MINNESOTA SB 3129 \(2008\)](#) Includes appellate court appointments in the Commission on Judicial Selection process (process currently limited to vacancies occurring in District Court and Worker's Compensation Appeal Court). Approved by full Senate. In House Public Safety and Civil Justice committee

[MISSOURI HJR 49 \(2008\)](#) AMENDED: Increases from three to five the number of judicial candidates nominated by the Nonpartisan Judicial Commission. Governor may veto the first list. If the Governor fails to appoint any of the nominees from a second list within 60 days, the Lieutenant Governor must appoint. If the Lieutenant Governor does not, the commission will appoint. Changes composition of Appellate Judicial Commission: 3 Missouri Bar members (one from each court of appeals district), 3 non-bar members (one from each court of appeals district), one non-bar member from anywhere the state. Circuit Judicial Commission: two Missouri Bar members and three non-bar members appointed by the Governor. All Commissioners to be named by Governor and confirmed by Senate to serve 4-year terms. All hearings, debates and votes of commissions to be conducted on 72 hours public notice. List of applicants for any judicial vacancy must be open to the public with their names posted on the web site of the Supreme Court and all information

available to the respective commissions on the judicial candidates must be made available to the Governor. Every applicant nominated will be subject to a background check, including a criminal check, which will not be a public record, but available only to the commission and the Governor. Transfers responsibility for the approval of expenses incurred in the administration of the judicial selection plan from the Supreme Court to the Commissioner of the Office of Administration. Approved by House Rules committee

[SOUTH CAROLINA SB 990 \(2008\)](#)

Requires those wishing to testify before the Judicial Merit Selection Commission, including candidates, furnish a written statement of proposed testimony two weeks prior (currently, 48 hours prior). Authorizes Commission to allow for submission after the deadline. Approved by full Senate and House. Vetoed by Governor.

Qualifications and Terms: Newly Introduced

NONE

Qualification and Terms: Floor and Committee Activity

[ARIZONA SB 1186 \(2008\)](#) (Bill) Requires Supreme Court create performance evaluation system for Superior Court commissioners. Evaluations to include public hearings on commissioners and reports to be made public. Approved by House Judiciary committee

[ALABAMA HB 464 \(2008\)](#) ORIGINAL:
Requires a lawyer be admitted to the practice of law for a certain number of years

before taking judicial office. Supreme Court, Court of Civil Appeals, and Court of Criminal Appeals: 10 years. Circuit Court: 5 years. District Court: 3 years. AMENDED: Same, but specifies will not apply to any judge elected in 2008. Approved by full House. In Senate Judiciary committee

[FLORIDA HB 295 \(2008\)](#) Allows judges who have lost their seats in elections or who have failed to be re-elected to be considered “retired” for purposes of temporary assignment. Approved by Safety & Security Council

[GEORGIA HB 1245 \(2008\)](#) Prohibits senior judges from presiding over capital cases. Modifies means by which indigent defenses are paid for. Approved with respective amendments by full House and Senate. Conference committee's appointed

[HAWAII HCR 69 \(2008\)](#) Establishes task force to review retirement age for state court justices and judges, the lack of judicial term limits, the lack of a senior judge system, the current system of judicial accountability, and current means of judicial fitness. Report due by start of 2009 session. Approved by House Judiciary committee

[IOWA SF 2353 \(2008\)](#) Changes variety of laws pertaining of judicial selection and placement. 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 that at time of appointment, person must reside in district where vacancy exists. (Current, need only reside in county where vacancy exists.) Requires District Judicial Nominating

Commission consider all applicants and certify three persons for appointment in writing within 60 days to the longest serving district judge in the judicial election district where the vacancy occurs. (Current law provides that the list go to the Chief Judge of the judicial district.) Requires District Judges vote on names within 30 days or Chief Justice to make the appointment. Grants Chief Justice power to move “vacancy” to another judicial election district upon finding by the Chief Justice of substantial disparity in the allocation of judgeships and judicial workload between districts, and the Judicial Council approves the apportionment. Provides that a Senior Judge shall cease being a Senior Judge upon attaining 78 years of age. Approved by House Judiciary committee

[MARYLAND HB 1559 \(2008\)](#) Prohibits the Chief Judge of the Court of Appeals from assigning a former judge to sit temporarily in a court in a case in which a sentence of death is sought. Rejected by House Judiciary committee

[MARYLAND SB 293 \(2008\)](#) (CON AMENDMENT) Authorize the legislature to prescribe additional qualifications for certain judges of the Orphans’ Court judges under certain circumstances for Baltimore City. Requires City request increase in qualifications. Approved by full Senate. In House Rules committee

Rule Making Authority: Newly Introduced

[ALABAMA SB 486 \(2008\)](#) Removes power of Presiding Circuit Judges to administer indigent defense systems and Supreme Court rules related to same. Creates

Alabama Indigent Defense Commission to provide for the defense of indigent persons through a newly created Office of Indigent Defense Services and indigent defense advisory boards in each judicial circuit. Removes Supreme Court rule making authority over and Circuit Judge’s approval of indigent defense compensation and transfers power to Indigent Defense Commission. In Senate Finance committee

[LOUISIANA SB 496 \(2008\)](#) Requires judge recuse if biased toward or against a witness. Requires judge recuse if in violation of any canon of the Code of Judicial Conduct or any other rule of the Louisiana Supreme Court. In Senate Judiciary A committee

Rule Making Authority: Floor and Committee Activity

[COLORADO HB 1193 \(2008\)](#) Prohibits district and county judges from presiding over a case in which they or a former judge of the same district or county court are a party. Requires the Chief Justice appoint presiding judge in such cases. House concurs with Senate amendments. Sent to Governor

[GEORGIA SB 396 \(2008\)](#) Removes the Commissioner and Department of Administrative Services. Removes Commissioner from the Georgia Courts Automation Commission. Transfers administrative and salary paying and travel expense reimbursement functions for Superior Court Judges and court reporters to the Council of Superior Court Judges. Provides that Council of Superior Court Judges is a separate unit within the State Accounting Office. Approved by full House

[GEORGIA SB 508 \(2008\)](#) Modifies provisions relating to Probate Court. Modifies membership of Probate Judges Training Council. Requires Probate Court meet first Monday of January, April, July, and October (currently, first Monday of every month). Approved by full House

[HAWAII HB 2697 \(2008\)](#) Authorizes the Intermediate Appellate Court to subpoena and compel the attendance of witnesses and compel the production of books, papers, documents, or tangible things. Authorizes any Intermediate Appellate Court Judge to administer oaths. Approved by Senate Judiciary committee and full Senate

[HAWAII SB 3202 \(2008\)](#) Increases mandatory retirement age for judges and justices from 70 to 80. Approved by House Finance committee

[KANSAS HB 2825 \(2008\)](#) Provides that in civil and criminal cases the court or any party may request a hearing to seal or redact the court records or to close a court proceeding. Reasonable notice of such hearing would have to be given to all parties in the case. In a criminal case, notice would also have to be given to the victim. If the court grants the request, it would make and enter a written finding of good cause before closing the proceedings or granting leave to file the records under seal. Good cause does not exist unless the court makes a finding on the record that there exists an identified compelling safety, property, or privacy interest of a litigant that predominates the case and such interest outweighs the public interest in access to court records and proceedings. Approved by full Senate. To Governor for approval

[MARYLAND HB 771 \(2008\)](#) Continues the State Board of Law Examiners under the Court of Appeals until 2019 (set to sunset in 2009). Increases maximum Bar examination fee that the Court of Appeals may impose on an applicant. Approved by full Senate with Senate amendments. House refused to agree to amendments. Conference committee appointed (see SB 514 for conference report)

[MARYLAND SB 514 \(2008\)](#) Conference committee appointed to reconcile with HB 711. Specifies the “intent” (rather than “requirement”) of the General Assembly that bar examination fees pay for the State Board of Bar Examiners. Conference committee report adopted by House and Senate.

[MARYLAND HB 886 \(2008\)](#) Specifies English as state’s official language and the “language of government functions and actions.” Applies requirements to all branches, including judiciary. Requires official documents and communications be in English. Reported unfavorably by House Health and Government Operations committee

Structure Changes: Newly Introduced

NONE

Structure Changes: Floor and Committee Activity

[LOUISIANA HB 69 \(2008\)](#) Requires the Judicial Council to adopt standards and guidelines to be applied in determining the necessity of splitting or merging a court and requires the council to provide information to the appropriate standing committees of

the House of Representatives or of the Senate as to their recommendation.
Approved by House Judiciary committee

[MARYLAND HB 87 \(2008\)](#) Authorizes a District Court commissioner to exercise the powers of that office in any county to which the commissioner is assigned by the Chief Judge of the District Court. Authorizes the Chief Judge of the District Court to assign a commissioner to serve temporarily in any county. Repeals limitations to the contrary. Approved by full House and Senate

[NEW HAMPSHIRE SB 378 \(2008\)](#) Creates the Committee to Study the Creation of a Business Court at the Superior Court Level. Report due by November 1, 2008. Approved by full Senate. In House Judiciary committee

Jurisdiction: Newly Introduced
NONE

Jurisdiction: Floor and Committee Activity

[HAWAII SB 2785 \(2008\)](#) Increases District Court civil jurisdiction from \$20,000 to \$30,000. Effective date January 1, 2050. Approved by House Finance committee

[IOWA SF 2356 \(2008\)](#) Amends variety of laws related to the judiciary. Clerks of the District Court to be appointed by and removable for cause by the Chief Judge for the district. (Currently, clerk chosen by and removed by majority vote of District Judges in the district). Removes obligation of District Court Clerk to collect uncontested parking violation fines for a city or county. (See IOWA HSB 543). Approved by House Judiciary committee

[LOUISIANA HB 1294 \(2008\)](#) Increases civil jurisdiction of Justice Courts from \$3,500 to \$5,000. Approved by House Judiciary committee

[MARYLAND HB 644 \(2008\)](#) (STATUTE) Increasing minimum amount of civil suit entitled to jury trial from \$10,000 to \$20,000. Law goes into effect only of constitutional amendment approved (See below). Bill withdrawn

[MARYLAND SB 58 \(2008\)](#) Authorizes a District Court commissioner to exercise the powers of that office in any county to which the commissioner is assigned by the Chief Judge of the District Court. Authorizes the Chief Judge of the District Court to assign a commissioner to serve temporarily in any county. Repeals limitations to the contrary. Approved by full House. To Governor for approval

[MARYLAND SB 403 \(2008\)](#) (BILL) ORIGINAL: Increasing minimum amount of civil suit entitled to jury trial from \$10,000 to \$20,000. AMENDED: Changes limit from \$10,000 to \$15,000. Approved by full Senate. In House Rules and Executive Nominations committee

[MARYLAND SB 404 \(2008\)](#) (CON AMENDMENT) Increasing minimum amount of civil suit entitled to jury trial from \$10,000 to \$20,000. Rejected by full Senate 28-19 (3/5th majority required)

[MISSOURI HJR 41 \(2008\)](#) Removes court's jurisdiction to order the levy or imposition of new or increased taxes, licenses, or fees. Removes court's jurisdiction to order a government agency or the general assembly to appropriate or expend public funds.

Allows courts to enjoin the levy or collection of illegal taxes, etc. or the expenditure of public funds not authorized by law or contrary to law. Allows courts to order reductions in tax rates. Approved by full House. In Senate Judiciary committee

Salary and Budget: Newly Introduced

[ALABAMA HB 775 \(2008\)](#) Clarifies the amount of compensation a retired justice or judge may receive, without suspension of his or her judicial retirement benefits, when called to limited active service by the Chief Justice. In House Government Appropriations committee

[ALABAMA SB 485 \(2008\)](#) Clarifies the amount of compensation a retired justice or judge may receive, without suspension of his or her judicial retirement benefits, when called to limited active service by the Chief Justice. (Similar to ALABAMA HB 775) In Senate Finance committee

Salary and Budget: Floor and Committee Activity

[FLORIDA SB 1636 \(2008\)](#) Requires each judicial circuit to use civil proceedings to recover court costs and fines imposed in conjunction with a criminal conviction but not collected through the criminal proceedings. Requires courts to bring any person – other than a state inmate – who is liable for payment of a financial obligation in a criminal case before the court for an examination of his or her ability to pay. Directs the clerk of court to record in the official records a court order imposing county authorized additional court costs when a person is convicted of a felony,

misdeemeanor, delinquent act, or criminal traffic violation, and provides that the order becomes a lien attaching to the person's real and personal property. Creates joint select legislative committee to review the methods currently used by the courts to collect court-related fees, service charges, costs, and fines. Committee to report findings within 1 year. Approved by Senate Judiciary committee. In Senate Finance committee

[GEORGIA SB 460 \(2008\)](#) Modifies requirements and provisions of the Superior Court Clerks' Retirement Fund. Approved by House Retirement committee

[HAWAII SB 1526 \(2008\)](#) Removes Judicial Salary Commission's power to set salaries for Administrative Director and Deputy Administrative Director of the Courts. Sets their salaries as equal to state's Administrative Director and Deputy department head, respectively. Approved by House Finance committee

Other: Newly Introduced

[LOUISIANA SB 594 \(2008\)](#) Requires Clerks of Court to record and retain information about persons subject to peremptory challenges in criminal jury trial and the persons excepted for service; the race and gender of such persons; if peremptory challenges were made by the state or defense; the outcome of the challenges and if there were objections to the challenges; and the names of the judge and attorney in the case. Relieves the Clerk of civil liability for recording this information and requires it be reported to the Attorney General annually and from the Attorney General to the Governor and the Legislature. In Senate Judiciary B committee

[KANSAS HB 2968 \(2008\)](#) Fund salary plan adjustments for nonjudicial employees of the Judicial Branch by increasing docket fees by \$9 and depositing the money into the Judicial Branch Nonjudiciary Salary Adjustment Fund. Approved by full Senate. To Governor for approval

[MARYLAND SB 527 \(2008\)](#) Alters requirement that the State budget include an appropriation to pay rent to counties for space occupied by clerks of the circuit courts. House and Senate adopted conference committee report

[MARYLAND HB 1194 \(2008\)](#) Alters a requirement that the State budget include an appropriation to pay rent to counties for space occupied by clerks of the Circuit Courts. Bill Withdrawn

Other: Floor and Committee Activity

[CALIFORNIA AB 1491 \(2008\)](#) Reauthorizes the transfer of court facilities from counties to the state through December 31, 2009. Increases a county's annual facility payment (CFP) for each facility not transferred by October 1, 2008. Counties in which certain extraordinary circumstances exist may avoid the additional CFP upon mutual agreement with the AOC. Approved with Senate amendments by Assembly Judiciary committee

[FLORIDA SB 766 \(2008\)](#) Creates an exemption from public records requirements for the home addresses, telephone numbers, and certain other specified information concerning general magistrates, child support enforcement hearing officers, and the spouses, children, and grandchildren of specified judicial officials (similar, but not identical to HB 629). Approved by Senate Governmental Operations committee

[HAWAII HB 2696 \(2008\)](#) Clarifies the role of, and the number of candidates to be nominated by, the Friends of the Judiciary History Center in the event of vacancies on the Center's Executive Board. Approved by full Senate

[LOUISIANA HCR 6 \(2008\)](#) Urges and requests the La. State Law Institute to study the law regarding the method for taking an appeal and to report its findings to the House of Representatives prior to the convening of the 2009 session. Approved by House Judiciary committee

[NEW HAMPSHIRE SB 543 \(2008\)](#) Creates commission to study court security. Commission report due November 1, 2008. Approved by full Senate. In House Judiciary committee

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