

Gavel to Gavel

A review of state legislation affecting the courts

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Focus: Removal from Office for Specific Decisions

While threats to remove judges from office over their decisions are nothing new, the last two state legislative cycles have been unprecedented in the actual number of resolutions introduced. Beyond simple rhetorical jousting, the drafting and consideration of articles of impeachment (or in some states bills of address) for judicial decisions has become more widespread and are not necessarily only contending with highly charged political issues.

Divorce/Custody: In Missouri, an order in a divorce dispute lead to [draft impeachment articles](#) being sent to the judge in the case by a state representative. Along with the draft was a suggestion the judge remove herself from the proceedings. This is similar to a bill New Hampshire's legislature considered in 2006 ([HA 1](#)), itself an effort to remove a sitting judge for a decision made in a divorce case. The New Hampshire bill was unanimously rejected by a joint House-Senate Address committee.

Sentencing/ Disposition: In Maryland, a resolution (unnumbered at time of publication) has been introduced over a judge's decision to [release a man accused of rape](#). The judge dismissed the charges after a three-year trial delay because of trouble finding an interpreter. In 2006, two similar efforts were made. Ohio's House of Representatives considered removing a judge for his sentencing of a sex offender. The Speaker of the House [issued a press release](#) announced he was reviewing the processes by which the judge could be removed from the bench. Those plans were [shelved a few days later](#). Also in 2006, a Vermont judge faced an effort to force him into retirement due to his sentencing in a child molestation case. [JHR 52 of 2006](#) initially called upon the judge to resign; when the judge later reconsidered and increased the sentence, the resolution was heavily amended to remove references to resignation.

Same-sex Marriage: In 2006, Maryland considered a bill of address ([HA 1](#)) to remove a Maryland trial court judge for her decision finding in favor of same sex marriage. It was ultimately [rejected by that state's House Judiciary committee 20-3](#). In 2007, New Jersey Assembly resolutions [AR 217](#), [AR 218](#), [AR 219](#), [AR 220](#), [AR 221](#), [AR](#)



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[222](#) and [AR 223](#) sought the impeachment of the entire New Jersey Supreme Court for their ruling on same sex marriage. The resolutions died at the end of session with no action taken.

Newly Introduced

Selection

[ARIZONA SCR 1021 \(2008\)](#) Ends merit selection for Superior Court judges. Replaces with direct nonpartisan elections. Places Superior Court elections in state public financing system with funding to come from fines assessed on criminal convictions. In Senate Judiciary committee

[KANSAS HB 496 \(2008\)](#) Provides that district judge and district magistrate judge positions are to be filled by district conventions. In House Judiciary committee

[KENTUCKY HB 399 \(2008\)](#) Removes Governor's authority to appoint 4 non-attorney members of judicial nominating commissions. Grants authority to name 1 non-attorney each to President of the Senate, the Minority Floor Leader of the Senate, the Speaker of the House of Representatives, and the Minority Floor Leader of the House of Representatives. Deletes requirement that "these four shall include at least two members of each of the two political parties of the Commonwealth having the largest number of voters." Limits to judicial nomination commissioners to 4-year terms. In House Elections, Constitutional Amendments & Intergovernmental Affairs committee

[WEST VIRGINIA SB 475 \(2008\)](#) Requires nonpartisan elections of justices of the West

Virginia Supreme Court of Appeals and Circuit Court Judges. Ballot to separate partisan offices from nonpartisan. In Senate Judiciary committee

Qualifications and Terms

[IOWA SF 2057 \(2008\)](#) Eliminates requirement that a nominee for a district judgeship be a resident of the judicial election district prior to nomination. The nominee must still become a resident of the judicial election district upon appointment. In Senate Judiciary committee

[KANSAS SB 494 \(2008\)](#) Raises from 70 to 73 mandatory retirement age for judges. Allows judge who reaches 73 to finish current term in office. In Senate Judiciary committee

Rule Making Authority

[KENTUCKY HB 421 \(2008\)](#) Requests Chief Justice adopt administrative procedures relating to protecting parents from abuse. Requests Supreme Court create pilot project for opening dependency, needy, neglect, abuse, and termination of parental rights cases/proceedings. Modifies privacy laws to allow for such a project. If pilot project implemented, requires Administrative Office of the Courts report to legislative committees on progress. In House Judiciary committee

[VIRGINIA HB 718 \(2008\)](#) Provides that a court *may* establish (currently, *must* establish) a program to provide an option to any person upon whom a fine and costs have been imposed to discharge all or part of the fine or costs by earning credits for the performance of community service work

before or after imprisonment. In House Courts of Justice committee

[VIRGINIA SB 563 \(2008\)](#) Requires Circuit Court judges in civil cases notify parties of estimated time of decision if the case has been fully submitted and under advisement for over 90 days. Failure to provide the time estimate or misses the estimated time gives permission to the parties to notice the Chief Justice, who may then designate a judge or retired judge of a court of record or take other appropriate action to assist the regular judge in the performance of his duties. In Senate Courts of Justice committee

[WEST VIRGINIA HB 4326 \(2008\)](#) Allows the Supreme Court of Appeals to establish a uniform bail schedule which will allow persons charged with crimes to be released by posting a standard bail when a magistrate is not available. In House Judiciary committee

Structure Changes

[NEBRASKA LB 1107 \(2008\)](#) Expands existing drug courts to include problem-solving courts. In Senate Judiciary committee

[NEBRASKA LB 1110 \(2008\)](#) STATUTE: Creates Property Tax Review Court to serve as appellate court over such issues. Specifies location of sitting, number and qualification of judges, etc. Deletes references to Tax Equalization and Review Commission. In Senate Revenue committee

[NEBRASKA LR 231CA \(2008\)](#) CONSTITUTIONAL AMENDMENT: Creates Property Tax Review Court to serve as appellate court over such issues. Deletes references to Tax Equalization and Review

Commission. In Senate Reference committee

[NEW MEXICO SM 31 \(2008\)](#) Requests the administrative office of the courts conduct a study in the need for large counties to have a special judge or special master to hear code enforcement cases. In Senate Rules committee

[UTAH SB 72 \(2008\)](#) Modifies Justice Courts. Defines judges of these courts are judicial officers and provides they are to be paid for by the state. Sets compensation rates. Judges to be selected by judicial selection committees in each judicial district. Candidates must have at least graduated college (currently, need only have high school diploma). Creates performance evaluation and retention process for judges. In Senate Judiciary, Law Enforcement, and Criminal Justice committee

[WASHINGTON HB 3296 \(2008\)](#) Creates committee to examine existing tax appeals system and determine whether a new tax court should be established. In House Finance committee

[WEST VIRGINIA HCR 20 \(2008\)](#) Requests the Joint Committee on Government and Finance study the establishment of a court of chancery. In House Rules committee

[WYOMING HB 68 \(2008\)](#) Repeals drug court and youth court programs. Creates new, expanded drug/specialized court program. Creates state drug court advisory commission and local advisory committees. No committee yet assigned

Jurisdiction

[WEST VIRGINIA HJR 104](#) Creates Judicial Recusal Commission to rule on judicial recusal matters. Commission, on application by a party in a case, to issue a binding decision on whether a judge should be recused. In House Constitutional Revision committee

Salary and Budget

[ARIZONA SB 1257 \(2008\)](#) Prohibits Superior Court judges from receiving salary unless they certify that no “cause, action or case” for over 60 days after submitted for decision (currently, restriction is “cause” over 60 days only). In Senate Judiciary committee

[IOWA HF 2127 \(2008\)](#) Requires department of management publish on the internet a single state database providing detailed information on state funding. Requires judicial branch cooperated with posting of information. In House State Government committee

[VIRGINIA HB 1368 \(2008\)](#) Increases the daily per diem rate for substitute and retired judges from \$200 to \$250. Approved by House Courts of Justice committee. In House Appropriations committee

[VIRGINIA SB 112 \(2008\)](#) Removes the restriction on local salary supplements paid to local District Court employees. Approved by Senate Courts of Justice committee

Other

[WEST VIRGINIA HB 4374 \(2008\)](#)
Provides that the filing of a frivolous

lawsuit, defense or claim is a misdemeanor. Purpose is to “keep the court system from being clogged with cases of no merit.” In House Judiciary committee

[WEST VIRGINIA SB 536 \(2008\)](#) Exempts vehicles operated by the Supreme Court of Appeals from registration requirements for state cars. In Senate Transportation committee

Floor and Committee Activity

[NEW HAMPSHIRE CACR 9 \(2008\)](#)
Requires probate court judges appoint clerks of the probate court (currently, clerks are elected). Special ordered to House floor

[NEW MEXICO HB 142 \(2008\)](#) Creates a fund for the judicial performance evaluation program to be administered by the administrative office of the courts. Approved by full House. In Senate Judiciary committee

[NEW MEXICO HJR 5 \(2008\)](#) Specifies that where a person is named through the merit selection process to fill a judicial vacancy, they must serve at least one year before being required to face a retention vote at a general election. (Currently, must face retention at next general election). Approved by full House. In Senate Judiciary committee

[NEW MEXICO HM 12 \(2008\)](#) Requests the administrative office of the courts convene a task force to study need for probation services in the magistrate courts. Approved by full House

[NEW MEXICO SB 213 \(2008\)](#) Creates municipal court support division within the AOC. Approved by Senate Judiciary committee. In Senate Finance committee

[NEW MEXICO SB 239 \(2008\)](#) Changes the date the Supreme Court must elect the Chief Justice from January of odd-numbered years to April of even-numbered years. Approved by full Senate. In House Judiciary committee

[PENNSYLVANIA SB 1 \(2007\)](#) Provides for access to public information. Requires all “judicial agencies” and other agencies designate open-records officer. Senate concurred in House amendments. Bill reprinted as amended

[SOUTH CAROLINA SB 313 \(2008\)](#) Authorizes the creation of special license plates for retired judges and others. Approved by full House

[SOUTH DAKOTA HB 1129 \(2008\)](#) Creates Commission on Equal Access to Our Courts to provide grants to deliver legal services to persons meeting income eligibility guidelines. Approved as amended by House State Affairs and Appropriations committees

[VIRGINIA HB 783 \(2008\) ORIGINAL:](#) Increases the mandatory retirement age for judges from age 70 to age 75. **AMENDED:** Increases from age 70 to age 73. Approved as amended by full House. In Senate with no committee yet assigned

[VIRGINIA SB 19 \(2008\) ORIGINAL:](#) Requires judges who reach 70 prior to July 1, 2008 to retire. Judges who reach 70 after July 1, 2008 may continue to serve until 75. **AMENDED:** All judges may serve until 75. Approved by full Senate

[VIRGINIA SB 214 \(2008\)](#) Requires all special judges/justices to complete the minimum training program prescribed by the Executive Secretary of the Supreme Court (Currently, only those appointed after January 1, 1996 are required) and complete six hours of continuing legal education a year. Approved by Senate Courts of Justice committee

[VIRGINIA SB 244 \(2008\)](#) Restructures magistrate system. Transfers appointment and supervisory responsibilities from the circuit court judges to the Executive Secretary of the Supreme Court. Requires minimum of a bachelor's degree from an accredited college for magistrates named after July 1, 2008 unless waived by Executive Secretary. Requires chief magistrates be members in good standing of the Bar. Prohibits magistrates from the practice of law or other business unless granted permission by Executive Secretary. Magistrates required to serve nine-month probationary period (currently, six months). Grants Executive Secretary power to assign magistrates anywhere within a region, rather than anywhere within a judicial district. Approved as amended by Senate Courts of Justice committee

[VIRGINIA SJ 99 \(2008\)](#) Continues until 2009 Joint Subcommittee to Study the Operations of Circuit Court Clerks' Offices. Approved by full Senate

[WASHINGTON HB 2807 \(2008\)](#) Requires the inclusion of judicial candidate information in primary voters' pamphlets and on-line. Judicial candidates allowed to provide short statement advocating their election/re-election.

[WEST VIRGINIA SB 334 \(2008\)](#)

Authorizes the Supreme Court of Appeals to create a panel of senior status family court judges, promulgate rules for same, and assign them as appropriate. Approved as amended by Senate Judiciary committee. In Senate Finance committee

[WEST VIRGINIA SB 335 \(2008\)](#)

Authorizes Supreme Court of Appeals to create a panel of senior status magistrate assistants and allows their use when current

assistants are on medical leave. Approved as amended by Senate Judiciary committee. In Senate Finance committee

[WEST VIRGINIA SB 337 \(2008\)](#) Removes obsolete language concerning the Clerk of the Supreme Court of Appeals regarding salary, bond, staff and selection. Approved by full Senate. In House Judiciary committee

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