

Gavel to Gavel

A review of state legislation affecting the courts

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Focus: Recusal

While every state judicial system has rules and canons with respect to judicial recusal, legislatures in the last several sessions also examined whether to impose by statute recusal requirements. In this legislative session

Colorado's [SB 1193](#) would prohibit District and County Court judges from presiding over a case in which a judge or former judge of the same court is a party.

Massachusetts' [SB 870](#) and the almost identical [SB 871](#) would require a judge to "evaluate his own conscience as to his impartiality" upon written motion for recusal. A judge denying the motion would be required to sign the motion and forward a copy to the court's Chief Justice and all parties.

West Virginia's [HJR 104](#) would create a Judicial Recusal Commission to rule on judicial recusal matters. The Commission, on application by a party in a case, would be required to issue a binding decision on whether a judge should be recused.

Wisconsin's [SB 170](#) would require every party in a civil suit to receive a summary of the Supreme Court rules regarding recusal and impartiality and detailing the procedure to follow to review and copy a statement of the judge's economic interests. The Director of State Courts would be required to prepare the summary and procedure and provide the copies without cost.

Newly Introduced

Selection

[ARIZONA HCR 2063 \(2008\)](#) 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. (see [ARIZONA SCR 1021](#)) In House Judiciary committee

[MISSOURI HJR 66 \(2008\)](#) Shortens the terms of Supreme Court judges from 12 years to 10 years and court of appeal judges from 12 years to eight years. Raises minimum age to become a judge 30 years to 40 years and requires a judicial candidate to be a licensed attorney for at least 10 years with five years' experience as a trial



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attorney. Changes the method of appointment of members to the Commission on Retirement, Removal, and Discipline and makes the commission the sole arbiter in the decision to remove a judge Grants individual judicial circuits power to choose the method of judicial appointments by initiative petition not more than once every four years. Allows voters statewide to choose the method of filling judicial vacancies in a court of appeal and the Supreme Court by a majority vote every 10 years. In House Special Committee on General Laws

[NEW HAMPSHIRE HB 1361 \(2008\)](#)

Requires marital masters be re-elected (initial appointment would continue to be by administrative judge of the judicial branch family division). Requires marital masters to be New Hampshire residents. In House Judiciary committee

[NEW JERSEY ACR 82 \(2008\)](#) Ends tenture-until-age-70 system and replaces with 4 year terms. Creates nine-member bi-partisan Judicial Commission to recommend whether judges should be reappointed. Only one member of commission may be lawyer. If commission recommends retention, judge to face yes/no retention vote. Prohibits attorneys from contributing to judge's campaign. Specifies that salaries and pensions of justices and judges shall be by statutory enactment and not court rule or judicial decision. In Assembly Judiciary committee

[NEW JERSEY ACR 95 \(2008\)](#) Ends tenture-until-age-70 system for Supreme Court and replaces with 5 year terms. Justices to face yes/no retention vote at end of 5 year term. In Assembly Judiciary committee

[NEW JERSEY ACR 104 \(2008\)](#) Requires certain municipal court judges to be appointed by the Governor with the consent of the Senate. In Assembly Judiciary committee

[NEW JERSEY SCR 29 \(2008\)](#) Abolishes until-age-70 tenure for Supreme Court Justices. Requires Justices face retention elections every 5 years. In Senate Judiciary committee

[TENNESSEE HB 3990 \(2008\)](#) Revises the membership of the Judicial Selection Commission. Decreases term of commission members from six to four years. Requires Senate confirmation of Governor's appointee form list of names submitted by Commission. In House Judiciary committee

[TENNESSEE HB 4076 \(2008\)](#) Adds one non-lawyer to Judicial Selection Commission thereby increasing membership of commission from 17 to 18 persons. In House Judiciary committee

[TENNESSEE HB 3805 \(2008\)](#) See TENNESSEE HB 4076. In Senate Judiciary committee

[TENNESSEE SB 4107 \(2008\)](#) See TENNESSEE HB 3990. In Senate Judiciary committee

Qualifications and Terms

[MARYLAND HB 287 \(2008\)](#) Allows Legislature to increase qualification requirements for certain Orphan's Courts if the local government requests such an increase. In House Judiciary committee

[NEW JERSEY ACR 110 \(2008\)](#) See NEW JERSEY SCR 59. In Assembly Judiciary committee

[NEW JERSEY SCR 59 \(2008\)](#) Increases mandatory retirement age for judges from 70 to 75. In Senate Judiciary committee

Rule Making Authority

[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. In House Judiciary committee

[MARYLAND SB 514 \(2008\)](#) See MARYLAND HB 771. In Senate Judicial Proceedings committee

[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. In House Health and Government Operations

[NEW HAMPSHIRE SB 441 \(2008\)](#) Authorizes the Chief Justice of the Supreme Court to request that the Governor appoint a representative from the judicial branch to the state's collective bargaining negotiating team. In Executive Departments and Administration committee

[NEW JERSEY ACR 55 \(2008\)](#) Removes power of Supreme Court over admission to practice of law and discipline of attorneys. Places power in newly created State Board of Attorney Licensing and Discipline. In Assembly State Government committee

[TENNESSEE HB 3939 \(2008\)](#) Requires the Supreme Court to establish a trial court judicial performance and evaluation program for the purpose of evaluating trial judges running for election or reelection to a full eight-year term. In House Judiciary committee

[TENNESSEE SB 3866 \(2008\)](#) See TENNESSEE HB 3939. In Senate Judiciary committee

Structure Changes

[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. In Senate Judiciary committee

[NEW JERSEY AB 356 \(2008\)](#) Creates Commercial and Technology Court. In Assembly Judiciary committee

[NEW JERSEY AB 1123 \(2008\)](#) Establishes a Special Medical Malpractice Part in the Superior Court. In Assembly Judiciary committee

[NEW JERSEY AB 1124 \(2008\)](#) Creates a Special Business Part in the Superior Court. Adds judges to Superior Court. In Assembly Judiciary committee

[NEW JERSEY AB 1125 \(2008\)](#) Creates Business Part in the Superior Court. In Assembly Judiciary committee

[NEW JERSEY AB 356 \(2008\)](#) Creates Business Court. In Assembly Judiciary committee

[NEW JERSEY SB 285 \(2008\)](#) Creates Medical Malpractice Court. In Senate Judiciary committee

[NEW JERSEY SB 642 \(2008\)](#) Creates Business Court. In Senate Judiciary committee

Jurisdiction

[ARIZONA HB 3913 \(2008\)](#) Prohibits, a court from citing or basing its determination on a resolution, ruling, policy, law or determination of any kind made by a foreign nation, an international court of justice or criminal court or other similar international or multinational body, the United Nations, or an agreement between an individual, head of state, entity or political subdivision of a state and a foreign nation. Excludes from the prohibition determinations made pursuant to U.S. treaties. In 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). In House Judiciary committee

[MARYLAND SB 403 \(2008\)](#) See MARYLAND HB 644. In Senate Judicial Proceedings committee

[MARYLAND SB 404 \(2008\)](#) (CON AMENDMENT) Increasing minimum amount of civil suit entitled to jury trial from \$10,000 to \$20,000. In Senate Judicial Proceedings committee

[NEW JERSEY SCR 18 \(2008\)](#) Prohibits State courts from requiring that State

government spend money. In Senate Judiciary committee

[NEW JERSEY ACR 118 \(2008\)](#) See NEW JERSEY SCR 63. In Assembly Judiciary committee

[NEW JERSEY SCR 63 \(2008\)](#) Allows legislature to override any judicial decision by 2/3rds vote. Requires courts interpret state Constitution “in a manner consistent with the intention of the people when ordaining or amending the same.” Prohibits courts from compelling the State or any of its subdivisions to expend any money, or restraining the expenditure thereof. In Senate Judiciary committee

Salary and Budget

[CONNECTICUT SB 107 \(2008\)](#) Specially appropriates nine million dollars to the Judicial Department for the purpose of increasing funding for security and the installation of security systems at state court facilities and parking areas. In Joint Committee on Judiciary

[FLORIDA SB 1636 \(2008\)](#) Requires the Legislature to establish a joint select committee to review methods of collecting court-related fees, service charges, costs, and fines used by Circuit and County Courts. Requires the committee to submit recommendations for a uniform statewide method for collection. Report due by July 1, 2009. In Senate Judiciary committee

[IOWA HB 2175 \(2008\)](#) Establishes a county courthouse infrastructure and security program and fund within the Supreme Court. Funding for the program to come through an increase in the tax on certain gambling structures. Grants from the

program may be used by counties for courthouse infrastructure projects and the purchase of courthouse security equipment or building enhancements that improve courthouse security and creates commission to administer the grants. In House State Government committee

[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. In Senate Budget and Taxation

[MISSOURI SCR 27 \(2008\)](#) Encourage the Supreme Court to work with the presiding judges of the various judicial circuits, the Office of the State Courts Administrator, and the Circuit Court Budget Committee in order to efficiently allocate resources among the various circuits. Encourages the Court to continue to track judges' caseloads, and to examine and alter its Rules if necessary to implement and expand the program that authorizes transfers of judges to circuits in need. In Senate Rules committee

[RHODE ISLAND HB 7385 \(2008\)](#) Requires salary of the jury commissioner be set by State Court Administrator (currently set by Unclassified Pay Plan Board). In House Finance committee

[WISCONSIN SB 479 \(2008\)](#) Prohibits judges and other elected officials convicted of certain felonies from receiving an annuity, lump sum payment, or death benefit under the Wisconsin Retirement System. In Joint Survey Committee on Retirement Systems

[WYOMING SF 67 \(2008\)](#) Defines judicial and other salaries. Supreme Court: \$126,500

(7/1/08); \$131,500 (7/1/09). District Court: \$120,400 (7/1/08); \$125,200 (7/1/09). Circuit Court: \$98,800 (7/1/08); \$102,800 (7/1/09). In Senate Judiciary committee

Other

[KENTUCKY HCR 97 \(2008\)](#) Requests the Supreme Court and the Administrative Office of the Courts to provide basic and in-service training for attorneys serving as guardians ad litem. In House Judiciary committee

[NEW HAMPSHIRE HB 1180 \(2008\)](#) Includes bailiffs and court officers in the definition of "law enforcement officer" under the capital murder law. Clarifies that family division judges are included in the definition of "judicial officer" under the capital murder law. In Criminal Justice and Public Safety committee

[TENNESSEE HB 3906 \(2008\)](#) Requires all courtrooms within the state in which court is held to have a conspicuous notice posted immediately outside the courtroom advising litigants of the existence of the Court of the Judiciary to hear complaints against judges and to provide a process by which appropriate sanctions may be imposed against a judge. In House Judiciary committee

[TENNESSEE SB 4053 \(2008\)](#) See TENNESSEE HB 3906. In Senate Judiciary committee

[WEST VIRGINIA HB 4391 \(2008\)](#) Allowing magistrates and family court judges to carry concealed weapons on courthouse property. In House Judiciary committee

[WISCONSIN SB 458 \(2008\)](#) Requires state AOC director remove a case or charge involving a civil forfeiture or misdemeanor from state's publically accessible case information system within 90 days after being notified that the case or charge has been dismissed, that the defendant has been found not guilty of all of the charges in the case, or that the case or charge has been overturned on appeal and dismissed. Requires removal from system within 120 days information regarding felony cases in which the case or charge has been dismissed, that the defendant has been found not guilty of all of the charges in the case, or that the case or charge has been overturned on appeal and dismissed. In Senate Public Health, Senior Issues, Long Term Care and Privacy committee

Floor and Committee Activity

[HAWAII HB 2695 \(2008\)](#) Permits the Judicial Selection Commission to employ people exempt from certain civil service law. Employees shall serve at the pleasure of the Commission and shall be included in any benefit program generally applicable to officers and employees of the State. Approved as amended by House Judiciary committee. In House Labor 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 as amended by House Judiciary committee. In House Finance committee

[HAWAII HB 3086 \(2008\)](#) Abolishes existing Commission on Judicial Discipline

created by the Supreme Court and replaces with an independent Judicial Conduct Commission. 9 member commission to be appointed by Governor (2 members), Speaker of the House (2 members), President of the Senate (2 members), the State Bar (2 members) and state's judges/justices (1 member). Only the member selected by the state's judges/justices may be a judge. Approved as amended by House Judiciary committee. In House Finance committee

[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 Senate. In House (see House version [HB 87](#))

[NEW HAMPSHIRE CACR 34 \(2008\)](#) Specifies that legislature alone shall have the authority and responsibility to reasonably define the content of an adequate public education and to distribute state funds for public education in the manner that it reasonably determines to alleviate local disparities. Approved as amended by full Senate

[NEW HAMPSHIRE SB 32 \(2007\)](#) Increases small claims actions limitations from \$5,000 to \$10,000. Requires mediation for small claims actions exceeding \$5,000. Approved as amended by full Senate. To House with Senate amendments

[NEW HAMPSHIRE SB 349 \(2008\)](#) Allows continuation of judicial retirement plan

benefits for judges called to full-time active military duty. Approved by full Senate

[NEW HAMPSHIRE SB 370 \(2008\)](#) Grants the Chief Justice of the Supreme Court the power to enter orders to suspend, toll, or otherwise grant relief from time deadlines imposed by statutes and rules of procedure, for a 21-day period, in the event of a declared state of emergency. Permits the legislature to terminate such orders by concurrent resolution. Approved by full Senate

[NEW HAMPSHIRE SB 446 \(2008\)](#) Allows probate Court judges and District Court justices to sit on either court in certain circumstances. Approved as amended by full Senate

[NEW HAMPSHIRE SB 470 \(2008\)](#) Allows lobbyists and those connected with lobbyists to sit on committees established by the judicial branch. Approved by Senate Election Law and Internal Affairs committee

[NEW JERSEY AB 2135 \(2007\)](#) Increases judicial salaries. Chief Justice \$184,551; Associate Justice: \$178,091; Superior Court Appellate Division Judge: \$168,540; Superior Court Assignment Judge \$164,888 Superior Court and Tax Court Judges: \$158,428. Signed into law by Governor

[NEW MEXICO SM 24 \(2008\)](#) Requires interim legislative committee study alternative (i.e. other than criminal) adjudicative procedures for traffic offenses. Approved by full Senate

[NEW MEXICO SM 31 \(2008\)](#) Requests the Administrative Office of the Courts to conduct a study on the need for counties with large populations to have a special

judge to hear code enforcement cases. Approved by full Senate

[RHODE ISLAND HB 7006 \(2008\)](#) Allows any magistrate of the Superior Court as of 1/1/08 who serves /presiding justice of the superior court/magistrate of the family court in service as of 1/1/08 who serves/chief judge of the family court to be appointed for a term of 10 years. Became law without Governor's signature

[UTAH SB 105 \(2008\)](#) Creates 13-member Judicial Performance Evaluation Commission and removes evaluation from the Judicial Council. Requires performance evaluation for judges up for retention and defines elements in the evaluation as well as minimum performance standards. Requires commission survey and findings be posted online and published in voter's guide. Commission may recommend retention, recommend against retention, or make no recommendation. Approved as amended by full Senate

[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. Previously approved by full Senate. Motion to reconsider agreed to. Recommitted to Senate Courts of Justice committee and continued to 2009 session

[WEST VIRGINIA HB 4388 \(2008\)](#) Authorizes the Supreme Court of Appeals to maintain a domestic violence database to retain copies of protection orders. Approved by full House

[WEST VIRGINIA HCR 20 \(2008\)](#) Requests the Joint Committee on Government and

Finance study the establishment of a courts
of chancery/business courts. Approved by
full House

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