

# Gavel to Gavel

A review of state legislation affecting the courts

Week ending June 3, 2011

Volume 5, Issue 23

## *Focus: Legislative Requests for Supreme Court Advisory Opinions*

The last several weeks have seen a flurry of requests for advisory opinions from state supreme courts. Michigan's governor [has asked for that state's supreme court](#) to weigh in on the changes the legislature made to the state's tax laws at the governor's request. At almost the same time, Alabama's Senate was voting to ask its [supreme court to opine on the use of slots in counties that allow bingo](#). Of the 10 states that allow such advisory opinions, legislative activities in the last several years have included:

### 2011

[Alabama SR 154](#) Whether [SB 234 of 2011](#), regarding the possession of a gambling device (specifically slot machines) as a class C felony, is constitutional given constitutional provisions allowing bingo in certain counties but not others if the slots are part of the bingo operation(s). Approved by full Senate 6/1/11.

[New Hampshire SR 9](#) Constitutionality of [HB 89 of 2011](#), requiring the attorney general to join the lawsuit challenging the Patient Protection and Affordable Care Act. Approved by full Senate 5/4/11.

### 2010

[Alabama HR 856](#) Licensing, regulating, and taxing of electronic bingo. Failed to be adopted.

[Colorado HJR 1011](#) Concurs in Governor's request for an advisory opinion on Colorado laws in light of *Citizens United*. **Supreme Court Advisory Opinion-** [In Re: Interrogatories Propounded by Governor Bill Ritter, Jr.](#) (March 22, 2010)

[New Hampshire HR 24](#) Constitutionality of [HB 1146 of 2010](#), eliminating the requirement that samples of breath of a DWI suspect be sufficient to allow an additional test for each breath sample taken and the captured sample or sample be given to the suspect for his or her own independent analysis. **Supreme Court Advisory Opinion-** [Opinion of the Justices \(Eliminating Requirement for Additional Breath Test Samples\)](#) (April 27, 2010)

### 2009

[New Hampshire SR 1](#) Constitutionality of [SB 21 of 2009](#), allowing voting in a state primary and presidential primary election by 17-year-old persons who will be 18 years of age at the next general election. **Supreme Court Advisory Opinion-** [Opinion of the Justices \(Voting Age in Primary Elections II\)](#) (May 6, 2009)

### 2008

[New Hampshire HB 32](#) Constitutionality of [SB 436 of 2008](#), allowing voting in a state primary and presidential primary election by 17-year-old persons who will be 18 years of age at the next general election. **Supreme Court Advisory Opinion-** [Opinion of the Justices \(Voting Age in Primary Elections I\)](#) (May 19, 2008)



ADVANCED GOVERNMENT SOLUTIONS  
Intelligence Analysis    Investigative    Screening & Identity Verification    Research    Case Management    Digital Asset Management

Legislative tracking provided by LexisNexis

Indicates featured legislation



## **Jurisdiction: Newly Introduced**

[New York AB 8054](#) Increases the monetary jurisdiction of the justice courts to \$5,000 from \$3,000. In Assembly Judiciary Committee.

[Wisconsin AB 156](#) Provides actions in which state government is sole party may be filed in any county (currently must be filed in Dane County/state capital). Provides appeals must be heard in Court of Appeals district OTHER than the one in which the case was file. Provides district is to be selected by appellant. In Assembly Judiciary and Ethics Committee.

[Wisconsin SB 117](#) Provides actions in which state government is sole party may be filed in any county (currently must be filed in Dane County/state capital). Provides appeals must be heard in Court of Appeals district OTHER than the one in which the case was file. Provides district is to be selected by appellant. In Senate Committee on Judiciary, Utilities, Commerce, and Government Operations.

## **Jurisdiction: Floor and Committee Activity**

[California SB 221](#) Increases small claims from \$7,500 (generally) to \$10,000 (generally). Approved by full Senate 5/31/11.

[New Hampshire CACR 14 \(Constitutional Amendment\)](#) Provides legislature alone shall define reasonable standards for elementary and secondary public education, establish reasonable standards of accountability, and mitigate local disparities in educational opportunity and fiscal capacity. Laid on the table (i.e. killed) by full House 6/1/11.

## **Qualifications and Terms: Newly Introduced**

NONE

## **Qualifications and Terms: Floor and Committee Activity**

[New Hampshire HB 511](#) AS AMENDED: Clarifies that retired judges over 70 years of age shall not serve as judges in any judicial capacity except as judicial referees. Approved with Senate amendment by full Senate 6/1/11. To House to concur with Senate amendment.

## **Rule Making Authority: Newly Introduced**

NONE

## **Rule Making Authority: Floor and Committee Activity**

[Alabama HB 199](#) Authorizes presiding circuit judge to conduct certain hearings by audio-video telecommunications. Approved by Senate Judiciary Committee 6/1/11.

Indicates featured legislation

Subscribe: <http://www.ncsc.org/newsletters>

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

All or any parts of *Gavel to Gavel* may be reproduced and distributed, for nonprofit educational purposes, with attribution to the National Center for State Courts, Research Division.

[California SB 326](#) AS AMENDED: Requires the Judicial Council, in consultation with stakeholder groups, and within 18 months of the date of enactment of this act, to adopt a rule of court to require courts that have fully implemented the California Case Management System to provide timely the public, to the extent possible and practicable, with same-day access to case-initiating civil and criminal court records, as defined. Approved as amended by full Senate 5/31/11.

[Nevada SB 194](#) ORIGINAL: Urges the Nevada Supreme Court to amend the Nevada Rules of Civil Procedure to require an attorney in class actions to make a disclosure to each member of the class concerning possible consequences that the member of the class may face if the member does not opt out of the class. AMENDED: Urges the Nevada Supreme Court to amend the Nevada Rules of Civil Procedure to require an attorney in such class actions to all the disclosures required pursuant to F.R.C.P. 23 to each member of the class. Approved by full Assembly 5/30/11. To Governor for approval.

[North Carolina HB 517](#) AS AMENDED: Creates position of chief magistrate. Provides chief district judge may appoint full time magistrate for county to serve as chief magistrate at chief district judge's pleasure. Modifies current method(s) for discipline of magistrates. Allows resident superior court judge to give notice in cases where defendant has not been tried for 9 months after indictment to hold a trial conference. Approved as amended by full House 5/31/11.

## Salary and Budget: Newly Introduced

[Ohio HB 247](#) Authorizes a court to cancel claims for uncollectible amounts due the court. Authorizes a sentencing court to waive, suspend, or modify payment of the costs of prosecution. Defines "case" in connection with the imposition of costs in a criminal case. In House (no committee).

[Texas HB 1 \(Special Session\)](#) Transfers audit responsibilities for the court-related Collection Improvement Program (CIP) from the Comptroller of Public Accounts (CPA) to the Office of Court Administration (OCA). Changes the classification of the Judicial and Court Personnel Training Fund to a dedicated account within the General Revenue Fund. In House Appropriations Committee.

[Texas HB 30 \(Special Session\)](#) Authorizes and permits unpaid furlough days for any "Agency" within judicial or other branches. In House Government Efficiency and Reform Committee.

[Texas HB 34 \(Special Session\)](#) Establishes judicial access and improvement account to provide funding for basic civil legal services, indigent defense, and judicial technical support through certain county service fees and court costs imposed to fund the account. In House Judiciary & Civil Jurisprudence Committee.

[Texas SB 23 \(Special Session\)](#) Establishes judicial access and improvement account to provide funding for basic civil legal services, indigent defense, and judicial technical support through certain county service fees and court costs imposed to fund the account. In Senate (no committee).

## Salary and Budget: Floor and Committee Activity

[Alabama HB 414](#) Reduces employer contribution rates into the Judicial Retirement Fund (JRF). Approved with Senate amendment by full Senate 6/1/11. House does not concur with Senate amendment.

Indicates featured legislation

Subscribe: <http://www.ncsc.org/newsletters>

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

All or any parts of *Gavel to Gavel* may be reproduced and distributed, for nonprofit educational purposes, with attribution to the National Center for State Courts, Research Division.

[California AB 973](#) AS AMENDED: Provides a trial court that proposes to close any courtroom or close or reduce hours of the clerks' office, in the required 60-day advance written notice, to include how the public may provide written comments on the court's closure or reduction plan. Requires the court to review and consider all public comments received, but does not obligate the court to provide responses to comments. Requires the court, if its closure or reduction plan changes as a result of the comments received, to immediately provide notice to the public by posting the revised plan, as provided. Provides that any change in the plan pursuant to the comments does not require additional notification. Requires each trial court, prior to adopting a budget plan for the fiscal year, to provide the public with notice of, and an opportunity for input on, the trial court's proposed budget. Requires that public input be allowed by submission of written comments, and by holding a public hearing, which must allow for public comment and must be conducted in a reasonably accessible location for residents of the county. Does not require the court to provide responses to comments received. Allows the hearing to be conducted at the county courthouse. Requires that at least 10 court days prior to the public hearing, notice of the hearing be given, as provided. Requires that, at least three court days prior to the public hearing, the proposed budget be made available to the public, as provided. Approved as amended by full Assembly 6/1/11.

[California SB 384](#) Requires the payment of a single complex case fee on behalf of all plaintiffs in a civil case. Approved as amended by full Senate 6/2/11.

[Connecticut SB 1219](#) Authorizes the Judicial Branch to lease its own facilities. Approved by full Senate 6/2/11.

[Illinois SB 1631](#) AS AMENDED: Provides that, pursuant to an administrative order from the chief judge of the circuit or the presiding judge of the county authorizing such collection, a clerk of the circuit court in any county that imposes a court automation fee shall also charge and collect an additional \$10 operations fee for probation and court services department operations. Provides certain exceptions to new \$10 fee. Provides that in relation to the payment of salaries of probation officers and other court services personnel whose salaries are reimbursed under the Act in any State fiscal year that the appropriation for reimbursement to counties for probation salaries and services is less than the amount appropriated to the Supreme Court for these purposes for State Fiscal Year 2002, the Administrative Office of the Illinois Courts shall adjust this amount appropriated in 2002 by 3% per year and may continue to permit use of the probation and court services fund for salaries in any State fiscal year where the State reimbursement to counties is regularly delayed more than 4 months. Senate concurs with House amendment 5/29/11. To Governor for approval.

[Louisiana HB 522](#) Provides deadlines for submission of court cost proposals to the Judicial Council and provides that the review process for court costs and fees shall not apply to mayor's courts, magistrate courts, or justice of the peace courts. Approved by full House 6/2/11.

[Louisiana HB 553](#) AS AMENDED: Requires each court having criminal jurisdiction to utilize a uniform fines and costs assessment form, approved by the supreme court, to record all fines, fees, costs, and assessments imposed on each criminal defendant. Requires the person or agency responsible for receiving these funds to distribute them monthly with an itemized detail of the source of the funds. Approved by Senate Committee on Judiciary A 5/31/11.

[Nevada AB 259](#) Transfers fees collected for transfer of cases between courts and recording of documents to legal services programs. Approved by Senate Committee on Judiciary 6/3/11.

Indicates featured legislation

Subscribe: <http://www.ncsc.org/newsletters>

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

All or any parts of *Gavel to Gavel* may be reproduced and distributed, for nonprofit educational purposes, with attribution to the National Center for State Courts, Research Division.

[Nevada SB 436](#) Transfers the responsibility to deposit certain money for the purpose of paying pension benefits to justices of the Supreme Court or district judges from the State of Nevada to the Court Administrator. Approved by full Assembly 5/29/11. To Governor for approval.

## **Selection: Newly Introduced**

NONE

## **Selection: Floor and Committee Activity**

[California SB 182](#) AS AMENDED: Adds gender identity and orientation to the list of demographic data provided by judicial applicants, nominees, appointees, justices, and judges required to be collected and released by the Governor, the Commission on Judicial Nominees Evaluation (JNE Commission) of the State Bar, and the Administrative Office of the Courts (AOC). Approved as amended by full Senate 6/1/11.

[Nevada AB 81](#) AS AMENDED: Increases filing fees to run for judicial and other offices. Provides for placement of supreme court candidates on ballot. Approved with Senate amendment by full Senate 5/30/11. Assembly does not concur with Senate amendment 6/1/11. Senate withdraws amendment 6/4/11. To Governor for approval.

[North Carolina HB 452](#) ORIGINAL: Ends public financing for judicial races. Eliminates instant runoff voting for judicial offices when late vacancies occur and replaces with win-by-plurality. AS AMENDED: Removes references to public financing repeal. Returns judicial races to partisan elections but provides straight-party voting is NOT to apply to judicial races. Alters filing fee amount for running for judicial office. Eliminates instant runoff voting for judicial offices when late vacancies occur and replaces with win-by-plurality. Approved as amended by House Committee on Elections 6/3/11.

[Oregon HB 2256](#) ORIGINAL: Requires county judge who exercises judicial functions to file for candidacy with county clerk. Modifies requirements regarding obligation of Secretary of State to reimburse county clerk for recall election for county judge who exercises judicial functions. AMENDED: Removes above provisions related to county judges. Approved as amended by House Rules Committee 6/2/11.

## **Structure Changes: Newly Introduced**

[Louisiana HCR 143](#) Requests that the Judicial Council Supreme Court conduct a comprehensive study of the caseload data and the number of judges of each appellate court, district court, parish court, city court, mayor's court, and justice of the peace court in Louisiana to determine changes necessary to the existing structure of the judiciary to provide the most efficient use of judicial resources and to report its findings and recommendations to the legislature prior to Feb. 15, 2012. In House Committee on Judiciary.

[New York AB 8024](#) Establishes a youth court diversion program to transfer the dispositional phase of proceedings to youth courts. In Assembly Children and Families Committee.

## **Structure Changes: Floor and Committee Activity**

Indicates featured legislation

Subscribe: <http://www.ncsc.org/newsletters>

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

All or any parts of *Gavel to Gavel* may be reproduced and distributed, for nonprofit educational purposes, with attribution to the National Center for State Courts, Research Division.

[Nevada SB 94](#) Creates 10th judicial district and redistricts other districts accordingly. Approved by full Assembly 5/30/11. To Governor for approval.

[Rhode Island HB 5131](#) Reduces the number of divisions of the district court from six to four. Approved by full Senate 6/2/11. To Governor for approval.

[Rhode Island SB 742](#) Removes language referring to the terms of members of the general assembly on the commission on judicial tenure and discipline. (members were removed on July 1, 2007). Approved by full House 5/31/11. To Governor for approval.

## **Other: Newly Introduced**

NONE

## **Other: Floor and Committee Activity**

[Alabama SR 154](#) Requests Supreme Court give advisory opinion on whether constitutional amendments allowing bingo in certain counties allows for slot machines. Approved by full Senate 6/1/11. No additional approvals required.

[California AB 618](#) AS AMENDED: Provides that a person who is unable to understand English, and who is charged with a crime, has the right to a competent interpreter provided by the court to provide exclusive and ongoing interpretation services throughout any criminal proceeding as required by law. This includes a right not to share an interpreter with a witness. The person charged with the crime is also entitled to a separate interpreter not to be shared with a codefendant during any trial proceeding, including jury instructions, and in any proceeding, as required by law, at which witnesses are called and testimony is taken. Any rights pursuant to this provision may be waived as provided by this section. Provides that a person who is charged with a crime has a right to a determination by the court of the competence of an interpreter at any time during a proceeding if on the basis of the interpreter's provision of interpreter services during a criminal proceeding, the court determines there is good cause to question whether the continued use of the interpreter in the proceeding may prejudice the rights of the person charged with the crime such that it would not be in the interest of justice or efficiency for the interpreter to continue. Specifies that notwithstanding any other provision of this article, a non-interpreter staff person of the court, or any person employed by the sheriff, probation department, prosecutor, jail or corrections department of the prosecuting city or county shall not provide interpreter services during a proceeding under this section. This subdivision shall not be construed to negate or modify the circumstances under which a court has the authority to appoint a noncertified interpreter. Establishes that the foregoing rights may only be waived expressly by the person charged if the waiver is affirmatively shown to be intelligent and voluntary. Approved as amended by full Assembly 6/1/11.

[California SB 662](#) Authorizes the Department of Finance and any county to enter into a contract that would authorize the county to integrate public services, including court security staff. Approved by full Senate 6/2/11.

[Connecticut HB 6438](#) Changes numerous provisions of probate court and its operations. Provides workers' compensation coverage for probate judges. Establishes a fee structure of twenty dollars per day when an individual copies probate court records with a hand-held scanner. Permits the Probate Court Administrator to establish a fee structure for electronic access to data processing systems. Approved as amended by full House 5/31/11.

Indicates featured legislation

Subscribe: <http://www.ncsc.org/newsletters>

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

All or any parts of *Gavel to Gavel* may be reproduced and distributed, for nonprofit educational purposes, with attribution to the National Center for State Courts, Research Division.

[Connecticut SB 1224](#) Makes numerous changes to laws related to judiciary. Modifies laws to recognize expansion of the judicial performance evaluation program to judge trial referees. Authorizes court orders and notices to be signed and disseminated by electronic means. Deletes language that limits the circumstances under which a retired Supreme Court justice who has not yet reached seventy years of age may sit on a Supreme Court panel. Repeals obsolete references to supreme court messengers. Approved by full Senate 6/2/11.

[Louisiana HB 14](#) Allows judges and justices of federal courts domiciled in state to carry firearms at the same times and places as state judges. Approved by House Committee on Administration of Criminal Justice 6/1/11.

[Maine SB 297](#) AS AMENDED: Creates the Commission To Study Priorities and Timing of Judicial Proceedings in State Courts. Commission to "study the priority and timing of judicial proceedings in state courts including, but not limited to, judicial proceedings that require priority treatment pursuant to statute." Reduces the size of the commission and revises the membership to include 3 Senators, instead of 2. Deletes as required members representatives of the Maine State Bar Association, the Maine Prosecutors Association and Pine Tree Legal Assistance. Requires the commission to seek the participation of these organizations as well as the Maine Commission on Indigent Legal Services and the Maine Association of Criminal Defense Lawyers. Authorizes the commission to seek the participation of any other individuals or organizations. Approved as amended by Joint Committee on Judiciary 6/1/11. Approved by full House 6/3/11.

[Maine SB 393](#) Creates a Family Ombudsman in the Judicial Branch and the Department of Corrections. Rejected by full Senate 5/31/11. Rejected by full House 6/1/11.

[New York SB 464](#) Establishes the crime of aggravated harassment of court officers, law enforcement, and others. Approved by full Senate 6/1/11.

[North Carolina HB 778](#) AS AMENDED: Provides where there is significant evidence of prosecutorial misconduct in a case, the Chair of the Innocence Commission may request the Attorney General appoint a special prosecutor (currently, Director of the Administrative Office of the Courts appoints). Approved by House Committee on Judiciary Subcommittee B 6/2/11.

[Oregon HB 2667](#) ORIGINAL: Repeals obsolete provision relating to jury trials in county courts. AMENDED: Specifies that court administrator is subject to direction of court in entering judgment for judgment by default. Updates statutory references to Oregon State Bar's Lawyer Referral Service to include website address. Establishes, for declaratory judgment filings occurring on or after January 1, 2011, and before July 1, 2011, \$117 filing fee. Requires, upon request, partial refund of any filing fee paid at higher rate on or after January 1, 2011, and before effective date of Act. Approved as amended by full Senate 5/26/11. To Governor for approval.

[Wisconsin SB 93](#) Adds general prohibition against carrying weapons into a courthouse. Provides exemptions to allow carrying into courthouse by judges, those authorized by a judge in writing, and district attorneys. Approved by Senate Committee on Judiciary, Utilities, Commerce, and Government Operations 5/27/11.

Indicates featured legislation

Subscribe: <http://www.ncsc.org/newsletters>

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

All or any parts of *Gavel to Gavel* may be reproduced and distributed, for nonprofit educational purposes, with attribution to the National Center for State Courts, Research Division.