

# Gavel to Gavel

A review of state legislation affecting the courts

Week ending January 28, 2011

Volume 5, Issue 5

## Focus: Court Interpreters

Since its inception, *Gavel to Gavel* has focused on items in seven broad categories. Readers are welcome and encouraged, however, to submit their requests for a one-time special Focus piece outside those categories. This week's Focus is based on just such a request on legislation affecting court. Have a Focus piece you would like to see in a future *Gavel to Gavel*? Email [wraftery@ncsc.org](mailto:wraftery@ncsc.org) with your idea!

[Georgia HB 24](#) Substantially revises, supersedes, and modernizes provisions relating to evidence. Modifies existing state laws with respect to foreign language in the courts. Provides Supreme Court to set rules and requirements for foreign language interpreters. Specifies Supreme Court may establish fees to be paid for certification. In House Committee on Judiciary.

Hawaii [HB 298](#) and [SB 997](#) Exempts court interpreters from parking violations for expired meters. House: In Judiciary Committee. Senate: In Senate Judiciary and Labor Committee.

[Illinois HB 216](#) Permits counties to authorize a fee of up to \$10 for court interpreter services on criminal and traffic convictions for deposit into a Court Interpreter Services Fund under the control of the local chief judge. In House Rules Committee.

[Iowa SSB 1073](#) Provides that a "limited English proficient" (LEP) person who is a participant in any legal proceeding involving a court or an administrative agency or in a court-ordered program shall be entitled to an interpreter or a translator to assist the person in the proceeding or program. Defines "limited English proficient", "interpreter", "translator", and "participant." Provides that fees for interpreter or translator services shall not be charged to an LEP

participant in a legal proceeding or court-ordered program. Specifies that an oral language interpreter or a translator required for an LEP participant in a judicial branch legal proceeding or in a court-ordered program is to be paid by the state court administrator from the revolving fund established in Code section 602.1302, subsection 3 (known as the jury and witness fund). Excludes the costs of interpreter and translator services from being charged to a parent in a juvenile proceeding and to a person receiving indigent legal assistance services. Provides additional specifications for fees and qualifications for interpreter and translator services are to be determined by the court. Requires an interpreter or translator in any legal proceeding take an oath approved by the supreme court. Permits court to inquire into the qualifications, neutrality, and integrity of an interpreter or translator and disqualify any person from serving as an interpreter or translator. Requires electronic rather than audio recordings of the portion of proceedings where non-English testimony is given to be made and maintained. In Senate Judiciary Committee.

[Mississippi SB 2298](#) Creates interpreters fund and places it within the Administrative Office of Courts. In Judiciary, Division A Committee.

[Nebraska LB 451](#) Amends existing law to provide the cost of interpreter services for persons unable to communicate the English language shall be paid by the state with money appropriated to the Supreme Court \*for that purpose or from other funds, including grant money, made available to the Supreme Court for such purpose.\* In Senate Judiciary Committee.

[New York SB 1094](#) Establishes standards for court interpreters. Requires court interpreter file affidavit or affirmation that he/she will make a true and impartial interpretation of the proceedings and follow the standards set forth in the New York State Unified State



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Court System's Interpreter Manual and the Court Interpreter Canons of Professional Responsibility. Provides procedure for waiver of a non-English speaking person's right to an interpreter in any proceeding. In Senate Judiciary Committee.

[New York SB 1870](#) Requires orders of protection issued in family court or in cases of family offenses in criminal court to be translated into the native language of the parties. In Senate Judiciary Committee.

[New York SB 275](#) Allows certain courts of record to fix the compensation of a temporary appointed interpreter at not more than two hundred fifty dollars per day. In Senate Judiciary Committee.

[Texas HB 331](#) Authorizes governing body of a municipality to create a municipal court equal justice and education fund, portions of which may be used for interpreter services. Requires certain defendants to pay court costs for deposit in the fund. Prefiled.

## **Jurisdiction: Newly Introduced**

[Hawaii HB 1233](#) Increases small claims jurisdiction from \$3,500 to \$5,000. In House Judiciary Committee.

[Hawaii HB 1278](#) Increases small claims jurisdiction from \$3,500 to \$4,500. Allows either plaintiff or defendant to refer matter to small claims part (currently, only plaintiff may do so). In House Judiciary Committee.

[Indiana HCR 5006 \(Constitutional Amendment\)](#) Provides the judicial branch shall have no authority to direct the legislative branch to make any appropriation of money or to redirect or limit in any fashion an appropriation already made by law, except as the legislative branch may provide by law or as may be required by the constitution of the United States. In House Committee on Judiciary.

[Kansas HB 2087](#) Provides "foreign law," "legal code" or "system" means any law, legal code or system of a jurisdiction outside of any state or territory of the United States, including, but not limited to,

international organizations and tribunals and applied by that jurisdiction's courts, administrative bodies or other formal or informal tribunals. Provides "Any court, arbitration, tribunal or administrative agency ruling or decision shall violate the public policy of this state and be void and unenforceable if the court, arbitration, tribunal or administrative agency bases its rulings or decisions in the matter at issue in whole or in part on any law, legal code or system that would not grant the parties affected by the ruling or decision the same fundamental liberties, rights and privileges granted under the United States and Kansas constitutions." In House Committee on Judiciary.

[Montana SB 238](#) Increase jurisdictional limit for justice court from \$7,000 to \$12,000; for small claims from \$3,000 to \$7,000; for city court from \$5,000 to \$9,500. In Senate Judiciary Committee.

[South Carolina HB 3490](#) Provides "As used in this section, the term "foreign law" means any law, rule, or legal code or system established and used or applied in or by another jurisdiction outside of the United States or its territories...A court, arbitrator, administrative agency, or other adjudicative, mediation, or enforcement authority may not enforce a foreign law if it would violate a constitutionally guaranteed right of this State or of the United States. The provisions of this section apply only to actual or foreseeable violations of the constitutional rights of a person caused by the application of the foreign law." In House Judiciary Committee.

[Texas HB 911](#) Provides "In this chapter, "foreign law" means a law, rule, or legal code of a jurisdiction outside of the states and territories of the United States...A ruling or decision of a court, arbitrator, or administrative adjudicator may not be based on a foreign law if the application of that law would violate a right guaranteed by the United States Constitution or the constitution of this state." In House (no committee).

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

[Virginia HB 1590](#) Increases from \$15,000 to \$25,000 the maximum civil jurisdictional limit of general district courts. Approved with substitute by full House 1/25/11.

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

### [Hawaii SB1647 \(Constitutional Amendment\)](#)

Authorizes the chief justice of the supreme court to appoint judges who have retired upon attaining the age of seventy years as emeritus judges, permitting the appointed judges to serve as per diem judges or judicial mentors in courts no higher than the court level they reached prior to retirement and for terms not to exceed three months In Senate Judiciary and Labor Committee.

[Oklahoma SB 945](#) Requires newly elected district judges file a statement showing the terms of sale of the judge's law practice with the district attorney of the county in which the law practice is located. Provides purchaser of practice may not appear before judge for 2 years thereafter. Prohibits attorney leasing property from judge from appearing before judge until 6 months after lease ends. Prefiled (no committee).

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

[Arizona HB 2352](#) Removes the requirement that an appointed court commissioner have engaged in active general practice for at least three years before being appointed. Requires that an appointed commissioner be an Arizona resident for five years before taking office. Increases the term in which an appointed commissioner must have been admitted to practice law in Arizona from three to five years. Approved by House Judiciary Committee 1/27/11.

[Virginia SB 1066](#) Adjusts the mandatory retirement age under judicial retirement to age 73 (currently 70).

Approved by Senate Courts of Justice Committee 1/24/11.

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

[Hawaii SB 680](#) Clarifies that a judge may be disqualified for cause by motion that must be decided by a different judge. In Senate Judiciary and Labor Committee.

[Kansas SB 46](#) Transfers power to establish trial court e-filing and e-document storage to supreme court from local chief judge. In Senate Committee on Judiciary.

[Oklahoma HB 1611](#) Creates statutory Code of Judicial Conduct. Prefiled (no committee).

[Oklahoma SB 790](#) Requires appeal of judge's denial of recusal motion be directly to supreme court. Prefiled (no committee).

### [Oklahoma SJR 19 \(Constitutional Amendment\)](#)

Requires the Uniform Retirement System for Justices and Judges to have a funded ratio which equals or exceeds ninety percent (90%). Prefiled (no committee).

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

[South Dakota HB 1041](#) Provides presiding judge of a circuit shall arrange that a circuit judge is available to hold court in the county seat of each county in the circuit as necessary to distribute the work of the courts, alleviate congestion, and secure the prompt disposition of cases for each county. Approved by House Committee on Judiciary 1/24/11. Approved by full House 1/25/11.

## **Salary and Budget: Newly Introduced**

[Florida SB 7020](#) Re-creates the State Courts Revenue Trust Fund within the state courts system without modification. Abrogates provisions relating to the

termination of the trust fund to conform. In Senate Budget Committee.

[Georgia HB 41](#) Reduces per-page cost to prepare record on appeal from \$10 to \$1.50. In House (no committee).

[Hawaii HB 1381](#) Increases the surcharge on court filing fees used to fund indigent legal services. In House Judiciary Committee.

[Hawaii HB 301](#) Directs into the judiciary computer system special fund fees collected for electronic document certification, electronic copies of documents, and for providing bulk access to electronic court records and compilations of data. In House Judiciary Committee.

[Hawaii HB 829](#) Establishes the offense of loitering on public property and adds trespassing on public property to the offense of criminal trespass in the first degree. Establishes the homeless case management program and the homeless case management special fund, to be administered by the judiciary for the benefit of homeless persons convicted of loitering or trespass on public property. In House Housing Committee.

[Hawaii SB 1073](#) Increases the amount of surcharges for indigent legal fees. In Senate Judiciary and Labor Committee.

[Hawaii SB 1341](#) Amends retirement benefits for judges and other state/county employees who become members of the employees' retirement system after June 30, 2012. In Senate Judiciary and Labor Committee.

[Hawaii SB 272 \(Constitutional Amendment\)](#) Repeals the constitutional provision creating the commission on salaries which sets judicial and other salaries. In Senate Ways and Means Committee.

[Hawaii SB 276](#) Repeals laws related to the commission on salaries which sets judicial and other salaries. In Senate Ways and Means Committee.

[Hawaii SB 866 \(Constitutional Amendment\)](#) Requires the commission on salaries, which sets judicial salaries,

to hold a public hearing prior to submission of its recommendations to the legislature. In Senate Judiciary and Labor Committee.

[Hawaii SB 946](#) Establishes the access to justice trust fund under the judiciary as an endowment, to be administered by a nonprofit entity. Requires investment of the principal. Authorizes disbursement of interest earned to fund nonprofit legal service organizations to assist with the legal services needs of the poor, indigent, and other vulnerable populations In Senate Judiciary and Labor Committee.

[Hawaii SB 999](#) Directs into the judiciary computer system special fund fees collected for electronic document certification, electronic copies of documents, and for providing bulk access to electronic court records and compilations of data. In Senate Judiciary and Labor Committee.

[Iowa SSB 1062](#) Provides that if a project involves a real property lease agreement, lease-purchase agreement, or loan agreement, and at least 50 percent of the real property is to be used or occupied by the judicial branch, the county, when entering into the agreement, is authorized to follow the procedures for issuance of essential county purpose bonds. In Senate (no committee).

[Missouri HCR 18](#) Disapproves the salary recommendations of the Citizen's Commission on Compensation for Elected Officials. (Commission recommended an annual salary increase of \$14,681 for the Chief Justice of the Supreme Court, an annual salary increase of \$10,557 for Supreme Court Judges, an annual increase of \$6,478 for judges of the Court of Appeals, an annual increase of \$6,536 for circuit judges, and an annual increase of \$7,492.40 for associate circuit judges). Rejection of increase requires two-thirds vote of both House and Senate by 2/1/11. In House Rules Committee.

[New Mexico HB 130](#) Extends government restructuring task force until December 2011. Gives task force additional responsibility to provide scrutiny of cost-

savings and efficiencies in the judicial branch. In House Health and Government Affairs Committee.

[New Mexico SB 248](#) Adjusts state contribution rate for judicial retirement system. In Senate Public Affairs Committee.

[New Mexico SB 277](#) Increases magistrate courts operations fee applied to certain convictions from \$4 to \$7. In Senate Judiciary Committee.

[Oklahoma HB 1469](#) Requires state reimbursement when counties provide facilities and services for courts. Prefiled (no committee).

[Oklahoma SB 498](#) Allows certain courts to set salary rate for temporary court reporters. Prefiled (no committee).

[Pennsylvania HB 266](#) Eliminates cost-of-living increases in judicial and other salaries. In House Appropriations Committee.

[Texas HB 904](#) Increases municipal court building security fund fee conviction from \$3 to \$4. In House (no committee).

## Salary and Budget: Floor and Committee Activity

[Arizona HB 2355](#) Redefines for budget and other purposes various assessments as surcharges. Approved by House Judiciary Committee 1/27/11.

[Florida SB 224](#) Specifies the level of detail for each fund in the clerk of the court's budget. Requires the court clerk's approved budget be posted on a county's website. Approved by Senate Community Affairs Committee 1/25/11.

[Indiana SB 549](#) Consolidates judges' retirement fund and 9 other retirement funds into a new Indiana Public Retirement System. In Approved by Senate Committee on Pensions and Labor 1/27/11.

[New Mexico HB 58](#) ORIGINAL: Provides that certain amounts of the civil docket and jury fees be deposited into the General Fund. Provides contributions to judicial and magistrate retirement be provided from the General Fund. Increases contributions to judicial and magistrate retirement funds. AMENDED: Same, but strikes existing law that defines "judicial retirement fund" as including "docket and jury fees of metropolitan courts, district courts, the court of appeals and the supreme court." Approved as amended by House Appropriations & Finance Committee 1/26/11.

[New Mexico SB 166](#) Increases appellate docket fees from \$125 to \$225. Creates the Appellate Transcription Fund to indigent appeals. Provides appellate docket fees to go to Fund (currently, docket fees are allocated to the Supreme Court Automation Fund and the Metro and Magistrate Court Facilities Fund.) Approved by Senate Judiciary Committee 1/26/11.

[South Dakota HB 1038](#) Requires clerk of supreme court collect certain fees for the electronic transmission of court records. Approved by House Committee on Judiciary 1/21/11. Approved by full House 1/25/11.

## Selection: Newly Introduced

[Hawaii HB 1647 \(Constitutional Amendment\)](#) Provides for disclosure of the list of judicial nominees by the Governor upon receipt of the names from the judicial selection commission. In House Judiciary Committee.

[Iowa HB 138](#) Provides governor must appoint at least one district judicial nominating commission member from each county unless there are fewer counties than commissioners. In House Judiciary Committee.

[Kansas HB 2101](#) Ends merit selection system for future Court of Appeals judges (current judges would still be subject to retention elections). Future judges to be appointed by governor and confirmed by Senate. Changes term of office for future judges to "during good behavior". In House Committee on Judiciary.

[New Mexico HJR 15 \(Constitutional Amendment\)](#) Requires appointed judges serve at least a year before a

general election is held for that office. In House Voters and Elections Committee.

[Oklahoma HB 1307](#) Provides for nonpartisan election for court clerks and other county officers. Prefiled (no committee).

[Oklahoma HJR 1008 \(Constitutional Amendment\)](#) Requires partisan elections for all appellate judges. Prefiled (no committee).

[Oklahoma HJR 1009 \(Constitutional Amendment\)](#) Allows governor to appoint any person, not just those submitted by judicial nomination commission, to appellate court. Requires appointments be subject to senate confirmation. Prefiled (no committee).

[Oklahoma SJR 15 \(Constitutional Amendment\)](#) Requires judicial appointment made by governor under state's merit selection system be confirmed by senate. Prefiled (no committee).

[Oklahoma SJR 36 \(Constitutional Amendment\)](#) Ends state's merit selection system. Allows governor to appoint any qualified person with senate confirmation. Prefiled (no committee).

[West Virginia HB 2903](#) Authorizes the State Election Commission to promulgate a legislative rule relating to the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program. In House Finance Committee.

[West Virginia SB 293](#) Authorizes the State Election Commission to promulgate a legislative rule relating to the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program. In Senate Finance Committee.

## Selection: Floor and Committee Activity

[New Jersey ACR 81 \(Constitutional Amendment\)](#) Removes constitutional requirement that municipal court judges that preside over joint municipal courts be appointed by the Governor with the consent of the

Senate. Approved by Assembly Judiciary Committee 1/24/11.

## Structure Changes: Newly Introduced

[Hawaii SB 254](#) Establishes a temporary Hawaii veterans court as a part of the Circuit Court. Court to remain in effect until June 30, 2020. In Senate Public Safety, Government Operations, and Military Affairs Committee.

[Oklahoma HB 1555](#) Authorizes creation of veterans' treatment courts in all judicial districts. Prefiled (no committee).

[Pennsylvania HB 184](#) Creates Medical Professional Liability Court with its own appellate division to handle med-mal claims. In House Judiciary Committee.

[West Virginia SB 307](#) Creates Intermediate Court of Appeals consisting of no permanent judges but 3 judge panels randomly selected (2 current or retired circuit court, one supreme court justice). In Senate Judiciary Committee.

## Structure Changes: Floor and Committee Activity

[Nebraska LB 302](#) Calls upon Supreme Court to analyze state's court structure, including Supreme Court, Court of Appeals, district courts, county courts, separate juvenile courts, Nebraska Workers' Compensation Court, and specialty courts including drug court programs and problem solving court programs. Specifies areas Supreme Court must examine as part of this analysis. Requires Supreme Court submit restructuring plan to 2012 legislature. Approved by Senate Judiciary Committee 1/28/11.

[Vermont SB 1](#) Makes technical corrections to Judicial Restructuring Act of 2010. Approved by full House 1/28/11. To Governor for approval.

[Wyoming HB 107](#) Repeals the unconditional denial of a jury trial in municipal court. Approved by House Judiciary Committee 1/27/11.

## Other: Newly Introduced

[Arizona SB 1288](#) Provides “Government shall not deny, suspend or revoke a professional or occupational license, certificate or registration based on a person's exercise of religion...A person's exercise of religion is not unprofessional conduct.” Specifies ““Government” includes all courts and administrative bodies or entities under the jurisdiction of the Arizona supreme court.” In Senate Government Reform Committee.

[Hawaii HB 251](#) Adds administrative director and deputy director of the courts to list of state officials who must take ethics training. In House Judiciary Committee.

[Hawaii HB 298](#) Exempts court interpreters from parking violations for expired meters. In House Judiciary Committee.

[Hawaii HB 417](#) Permits a justice or judge to carry concealed on their person a loaded firearm for personal protection. Grants exemption to justices and judges from prohibition on firearms in detention facilities, prisons, courthouses, city halls, or public buildings. In House Public Safety & Military Affairs Committee.

[Hawaii HB 493](#) Transfers responsibility for judiciary security personnel from department of public safety to newly created office of the sheriff within the department of the attorney general. In House Public Safety & Military Affairs Committee.

[Hawaii SB 993](#) Adds administrative director and deputy director of the courts to list of state officials who must take ethics training. In Senate Judiciary and Labor Committee.

[Hawaii SB 997](#) Exempts court interpreters from parking violations for expired meters. In Senate Judiciary and Labor Committee.

[Missouri HB 310](#) Establishes the State Authority and Federal Tax Fund Act and reasserts the state's authority under the Tenth Amendment to the United States Constitution. Requires all federal tax moneys collected by the state on behalf of the federal government to be deposited into newly created Federal Tax Fund. Disburses funds to federal government only under certain circumstances. Requires judges “in compliance with the oath or affirmation clause found in Article VI, Constitution of the United States...implement this section regardless of any sanctions, threats, court action, or other pressure brought to bear by federal authorities.” In House (no committee).

[Montana D. 2097](#) Declares no authority has ever been given to the Judicial Branch of the federal government to preempt state legislation. Creates nullification commission and permits it to nullify any and all federal laws and regulations. Provides that if this act is challenged, “the proper jurisdiction for these issues lies with the supreme court of the United States alone, as stated in Article III, section 2, of the United States constitution.” Draft requested.

[Montana D. 1836](#) Subjects to criminal prosecution any state judge or other official who enforces federal firearms laws. Draft requested.

[New Hampshire HB 344](#) Establishes a judicial performance review commission and requires each district court and superior court judge and marital master to be reviewed by the commission every 3 years. In House Judiciary Committee.

[Oklahoma HB 1224](#) Restructures state's entire Worker's Compensation Court (in Oklahoma, this court is a special jurisdiction court within the judicial branch) into a Workers' Compensation Court of Existing Claims and a new executive branch Workers' Compensation Commission. Provides all current judges of Worker's Compensation Court are removed from office. Ends merit selection system, requires judges be appointed by governor and confirmed by senate. Prefiled (no committee).

## Other: Floor and Committee Activity

[Oklahoma HB 1780](#) Restructures state's entire Worker's Compensation Court (in Oklahoma, this court is a special jurisdiction court within the judicial branch) into a Workers' Compensation Court of Existing Claims and a new executive branch Workers' Compensation Commission. Provides all current judges of Worker's Compensation Court are removed from office. Ends merit selection system, requires judges be appointed by governor and confirmed by senate. Prefiled (no committee).

[Oklahoma HR 1005](#) Requests Congress impeach Federal Judge Vickie Miles-LaGrange "for abuse of authority" for issuing an injunction against state's anti-sharia ban Prefiled (no committee).

[Oklahoma SB 783](#) Creates Drug Court and Community Sentencing Reform Task Force. Prefiled (no committee).

[Pennsylvania HB 226](#) Provides Juvenile Court Judges' Commission may make recommendations and provide information regarding evidence-based programs. In House Judiciary Committee.

[Texas HB 799](#) Alters whether a justice of the peace court can be held outside the county seat. In House (no committee).

[Texas HB 857](#) Exempts certain judicial officers from certain requirements for obtaining or renewing a concealed handgun license. Expands authority of certain judicial officers to carry certain weapons. In House (no committee).

[Arkansas HB 1045](#) Increases penalties for placement of false liens on Arkansas judges or court personnel or judges from any other state/territory of the U.S because of the performance of their official duties. Approved by House Committee on Judiciary 1/27/11.

[Colorado HB 1018](#) Permits a seal to be electronically attached to or logically associated with an electronic record or document, including court records and warrants. Approved by full House 1/26/11.

[New Mexico SB 10](#) ORIGINAL: Creates crimes of intimidation of a judge, judge's staff, or judge's family and retaliation against a judge, judge's staff, or judge's family. AMENDED: Same, but requires "threatening \*bodily injury to or damage to the property of\*" for crime of intimidation. Approved as amended by Senate Public Affairs Committee 1/25/11.

[Utah HB 21](#) Changes some reports required of the Administrative Office of the Courts and the Judicial Council to be provided at the option of the Judiciary Interim Committee. Approved by full House 1/25/11. Approved by Senate Judiciary, Law Enforcement, and Criminal Justice Committee 1/28/11.

[Virginia HB 1565](#) Clarifies that the secure remote access to court records restrictions do not apply to secure access by attorneys and governmental agencies as authorized by the clerk. Approved as substituted by House Courts of Justice Committee 1/19/11.

[Wyoming HB 123](#) Repeals requirement that circuit court judges and magistrates provide surety bonds before taking office. Approved by House Judiciary Committee 1/27/11.

[Wyoming HJR 3](#) Resolution to United States Supreme Court. Demands United States Supreme Court refrain from issuing decisions which impermissibly expand federal power or restrict individual rights. Approved by House Judiciary Committee 1/27/11.