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Runaway jury



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Now on the State Net Web site

2003 State Session Recaps showcasing legislative statistics for each state.

Top Story

Trial by jury is a bedrock of the American justice system, but in many states low juror turnout is reaching crisis proportion. Now many states are making jury duty more appealing.

SNCJ Spotlight

Will Jury Patriotism Act deepen jury pool?

The right to a speedy trial decided by a jury of one's peers is one of the most basic tenets of the American justice system. But many Americans have come to view jury duty not as an opportunity to perform a vital civic duty, but as intrusive, costly and downright unappealing. In an effort to combat this attitude and to make jury service more palatable for more people, at least three states in 2003

passed laws strengthening their jury systems, and this year another 13 are reviewing similar bills.

At the crux of several of these efforts is model legislation called the Jury Patriotism Act (JPA), put forth by the conservative Washington D.C.-based American Legislative Exchange Council (ALEC). Three states – UTAH, ARIZONA, and LOUISIANA – have already adopted different versions of the Act, while CALIFORNIA, OKLAHOMA, OHIO, PENNSYLVANIA, VERMONT, KANSAS and WASHINGTON are among those considering implementing it, either in whole or in part. Kristin Armshaw, director for the ALEC Civil Justice Task Force, says the JPA is a response to what they see as a crisis in jury participation.

“The entire purpose for this legislation is to ensure that all defendants have a representative jury of their peers,” says Armshaw. “There is a real problem in many states because a large percentage of people do not even respond to their jury summons. In some states, turnout is as low as a 20%, which essentially denies the court system of getting a true cross-section of society.”

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Budget & taxes

SCHWARZENEGGER KEEPS ON WINNING: CALIFORNIA voters last Tuesday overwhelmingly approved Propositions 57 and 58, the two ballot measures that are the cornerstones of Gov. Arnold Schwarzenegger’s (R) plan to rescue the state from fiscal crisis. Prop 57, which will allow the state to borrow up to \$15 billion to refinance old debt and balance the budget, passed by a vote of 63% to 37%, while Prop 58, which restricts future borrowing and requires balanced budgets, passed 71% to 29%. The two measures were heavily promoted by Schwarzenegger in an \$8.5 million television ad campaign that went virtually unchallenged by critics. In contrast, Proposition 56, the proposal to lower the vote needed to pass a budget from a two-thirds majority to 55%, which was not supported by the governor and fiercely opposed in TV ads, was soundly rejected by voters. The passage of Props 57 and 58, which actually trailed in the polls as recently as a month ago, is seen as a major political victory for the governor that will only strengthen his position going into upcoming battles over workers’ compensation and other issues. (LA TIMES, NEW YORK TIMES, SACRAMENTO BEE)

PA GOV’S COMCAST DEAL BLACK-BALLED? A plan being pushed by PENNSYLVANIA Gov. Ed Rendell (D) to lure Comcast Corp. to downtown

Philadelphia has stalled in the Senate amidst widespread criticism from all sides. Rendell wants to create a "Keystone Opportunity Improvement Zone" in Philadelphia's Center City — the heart of the city's business district — so he can grant Comcast a 15-year tax break in exchange for building a 60-story headquarters building there. Many are questioning the governor's proposal, for reasons beyond the fact the cable giant doesn't exactly seem to be struggling financially, having just made a \$54 billion bid to acquire the Walt Disney Co. Some city officials, for instance, believe the governor's plan constitutes a misuse of the Keystone zone program, which was established in the 1990's to redevelop blighted areas, not prime developments like the proposed Center City building. City leaders are also worried about the loss of tax revenue that could result from the deal, as much as \$24 million per year by 2007, according to some estimates. Downtown property owners have objected to the fact the Comcast deal was made behind closed doors. The head of a landlords group contends the deal was the result of close ties between Rendell and Comcast; the cable giant's executive vice president, David L. Cohen, was Rendell's chief of staff when he was mayor of Philadelphia. Property owners are also concerned that the shiny new office tower and generous tax break could make it harder for them to keep their own buildings occupied. Rendell is working hard to overcome the resistance, believing the deal is needed to help fight unemployment in the city. The governor has said he thinks Comcast could do the same thing for Philadelphia that Coca-Cola did for Atlanta and Wal-Mart did for Bentonville, ARKANSAS. (PITTSBURGH POST-GAZETTE)

VA HOUSE ISSUES ULTIMATUM: In a late afternoon news conference last week, VIRGINIA House Speaker William J. Howell (R) demanded that Gov. Mark R. Warner (D) and Senate Republicans allow a referendum on the Senate's proposed multi-billion dollar tax plan or face an impasse on budget discussions. Republicans in the House and Senate have been feuding the last few weeks over their divergent views on the state's 2004-05 budget, the Senate supporting a \$62 billion plan that calls for \$3.9 billion in tax hikes, while the House favors a \$58.3 billion plan that would generate \$522 million by eliminating some business tax exemptions rather than by raising taxes. Warner and the Sen-

The Week in Session

States in Regular Session:

AK, AL, AZ, CA, CO, CT, DE, GA, HI, IA, ID, IL, IN, KS, KY, MA, MD, MI, MN, MO, MS, NE, NH, NJ, NY, OK, RI, SC, TN, US, UT, VA, VT, WA, WI, WV, WY

States in Skeleton Session: OH

States in Special Session:

ME "b", WI "d"

States in Recess:

AR "b", CA "d", CA "e", PA, SD

Currently Prefiling:

FL, LA, MT(Drafts for 2005)

States Adjourned:

AZ "b", CA "a", CA "b", CA "c", CT "a", CT "b", DE "a", FL "e", MD "2003 session", ME, NC "a", NC "b", NJ "2002 session", NM, NM "a", UT "c", WA "a", WA "b", WA "c"

Letters indicate special/extraordinary sessions

Source: State Net, 3/1/04



ate GOP had been portraying House Republicans as the roadblock preventing a budget agreement, but Howell and his associates in the House seized on an opportunity to shift the blame when former Gov. L. Douglas Wilder (D), U.S. Sen. George Allen (R) and Attorney General Jerry W. Kilgore (R) proposed a

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Bird's-eye view

Cutting the cost of prescription drugs

Prescription drugs account for 11% of all state Medicaid spending. Costs for prescription drugs have steadily risen for years, with increases averaging 18.8% annually. To save money 19 states have developed lists of less expensive, medically sound drugs from which physicians can prescribe medicines for their patients. States add to the savings by requiring doctors to obtain prior authorization before prescribing drugs that are not on the state's list of accepted medications. MAINE estimates it saves \$15 million annually by using lists, while MICHIGAN says the use of prior authorization shaves \$44 million from its annual \$540 million budget. The chart below shows which states have current or pending preferred drug lists.



Source: National Conference of State Legislatures



State Net Capitol Journal



referendum on the Senate plan last Monday. Howell's ultimatum the following day came just as closed-door budget talks were set to begin — and just 11 days before the General Assembly's scheduled adjournment date. Howell's declaration was strongly rejected by Warner, who called it "extremely irresponsible." The governor, who thinks the House speaker's move was just "posturing," warned lawmakers to "stop playing games." (WASHINGTON POST)

BUDGETS IN BRIEF: LOUISIANA Gov. Kathleen Blanco (D) has called the Legislature into a special session to address tax matters that can't be taken up during the regular session beginning March 29. The special session, which began yesterday, is expected to end well before its scheduled March 23 adjournment date (TIMES PICAYUNE). • The COLORADO Supreme Court agreed to hear a case between Gov. Bill Owens (R) and the Legislature over which of the two has the authority to decide how federal funds are spent. Both sides must submit briefs by March 10, and oral arguments are scheduled for March 31 (DENVER POST). • The UTAH Senate passed a bill imposing a 10% tax on sexually explicit businesses, such as nude dancing clubs and escort services, after amending the measure to divert proceeds from the tax into the state's General Fund rather than into sex offender treatment programs as initially specified. Some lawmakers say the change, which was made to punish the bill's sponsor, Rep. Duane Bourdeaux (D), who happens to be executive director of a facility that treats sex offenders, could open the state up to a lawsuit for targeting specific businesses for taxation in violation of the U.S. Constitution's equal protection clause (SALT LAKE TRIBUNE). • PENNSYLVANIA adopted a new competitive system for purchasing office supplies and equipment, prison food, asphalt and other items related to state government that administration officials say will save taxpayers as much as \$100 million per year. But some critics claim the new system favors big companies with large distribution networks at the expense of smaller firms that depend on government contracts to stay in business (PITTSBURGH POST-GAZETTE).

— *Compiled by KOREY CLARK*

Governors

G **GEORGIA FLAG STRUGGLE OVER...OR IS IT?** GEORGIA Gov. Sonny Perdue (R) was probably the happiest man in the South last week when voters overwhelmingly ratified a new state flag, ostensibly ending what has been a decades-long battle over which banner would fly over the Peach State. Many observers credit Perdue's campaign pledge to let voters decide on a new state flag — which many interpreted as a promise to let them vote on returning to the 1956 ver-



sion that prominently featured the Confederate battle emblem — as the pivotal element in his stunning 2002 upset of incumbent Democrat Roy Barnes. Devotees to the old flag were enraged when Barnes pushed through a new banner that did not prominently feature the Rebel symbol, and they went to the polls in droves to vote Barnes from office. But when Perdue handed the issue off to the Legislature, they came up with a third version that does not include the symbol at all. Although the new design carried all 159 counties by a significant margin, not everyone was thrilled with the outcome. A spokesman for a group called the Georgia Flaggers say they will not accept the result, and will now turn their efforts toward defeating Perdue in November. (ATLANTA JOURNAL-CONSTITUTION, USA TODAY)

Quote ...

“The Flag debate is now a chapter in history. We need to move forward to critical issues we have on the table.”

GEORGIA Sen. George Hooks (D) commenting on voters approving a new state flag that does not contain the Confederate battle emblem.

WILL KERRY CHOOSE GOV FOR VP? With MASSACHUSETTS Democrat John Kerry sewing up the Party’s presidential nomination, it has become open season for speculation over his running mate. Among the many names being bandied about are several Democratic governors, including ARIZONA’s Janet Napolitano, Tom Vilsack in IOWA, Mark Warner in VIRGINIA, PENNSYLVANIA’s Ed Rendell, ILLINOIS Gov. Rod Blagojevich and NEW MEXICO Gov. Bill Richardson. Vilsack, Napolitano and Warner offer the cache of not being Washington “insiders.” Rendell and Blagojevich offer strong support from the Rust Belt, while Richardson could be a big

... unquote

“We do not accept this result as final...And to all those elected officials that have worked to deny the people of Georgia a fair vote on the 1956 memorial flag, we the Flaggers are coming for you.”

Kenneth Watters, spokesman for a group called the Georgia Flaggers, decrying the results of the vote. (ATLANTA JOURNAL-CONSTITUTION)

draw as the first Hispanic on a major party ticket. Richardson went out of his way at last month’s National Governors Association meeting in Washington D.C. to claim he is not interested in the job, but he did express his belief that Kerry should pick a governor for the ticket’s second spot. He even nominated three of his Democratic colleagues — Vilsack, Rendell and KANSAS Gov. Kathleen Sebelius. Kerry is staying mum on the issue, saying only that the decision is an ongoing process. Speculation is also centering around Kerry’s former opponent, NORTH CAROLINA Sen. John Edwards and NEW YORK Sen. Hillary Rodham Clinton, as well as two more of Kerry’s primary opponents, Gen. Wes Clark and MISSOURI Rep. Dick Gephardt. (SIOUX CITY JOURNAL, ALBUQUERQUE TRIBUNE)

— Compiled by RICH EHISEN

minute activity as special interests try to push through legislation before the March 11 adjournment deadline. A couple of weeks ago, for instance, the national home merchandise rental giant, Rent-A-Center, launched an effort to reopen its rent-to-own centers in Wisconsin, currently prohibited from operating under the state's Consumer Act. The same week, grocery store owners saw passage of a bill stiffening penalties for grocery cart theft. Meanwhile, car manufacturers are trying to change the state's lemon law, and restaurants and food manufacturers are seeking immunity from obesity lawsuits. All of this activity was enough to spur a letter from Sen. Dem. Leader Jon Erpenbach to Sen. Maj. Leader Mary Panzer (R) expressing his concern that special interest legislation was taking precedence over "legislation that's good for the state." While Panzer denied that was the case, Jay Heck, executive director of Common Cause of Wisconsin, says what moves at the end of the session is often dictated by lawmakers' need for campaign cash. Legislation for people without means doesn't "have the urgency at the end that the special-interest legislation does," Heck said. (MILWAUKEE JOURNAL SENTINEL)

BUDGETS IN BRIEF: The WASHINGTON Senate approved a measure that would replace its 70-year-old blanket primary — ruled unconstitutional by a federal court last month — with a "top-two" system, which would send the top two vote-getters in the primary, regardless of their party affiliation, to the general election. The measure now goes to the House, where its outlook is uncertain (SEATTLE POST-INTELLIGENCER). • The GEORGIA General Assembly failed to meet its court mandated deadline for redrawing district maps ruled to be in violation of the U.S. Constitution's one person, one vote rule. Although a court-appointed team has now begun work on new maps, lawmakers still have an opportunity to advance their own plans if they can agree on them before the court's experts submit their draft on March 15 (ATLANTA JOURNAL-CONSTITUTION). • The FLORIDA Senate established a new rule forbidding members from raising money for political parties or other groups during the legislative session. While both the Senate and House already have rules prohibiting members from accepting contributions for their own campaigns during the session, lawmakers have raised more than \$3-million in contributions over the past four years for groups like "Floridians for Effective Government" and "Floridians for a Brighter Future" (ST. PETERSBURG TIMES).

— *Compiled by KOREY CLARK*

Hot Issues

A BORTION: An **IOWA** Senate committee narrowly approves SB 3130, legislation that establishes criminal penalties for the murder of an unborn child. Critics say the bill could criminalize women or doctors for mishaps during pregnancy. Supporters say the bill would not apply to legal abortions (DES MOINES REGISTER).

BUSINESS: An **IOWA** House committee approves HF 2202, a bill that would cap jury awards in medical malpractice cases at \$250,000. It must now be approved by the full House (DES MOINES REGISTER). • The **ARIZONA** Senate drops SB 1112, which would have penalized companies that ratchet up the price of gasoline or other commodities during an emergency. Gov. Janet Napolitano (D) has appointed a commission to investigate alleged gasoline price gouging in the Grand Canyon State (ARIZONA REPUBLIC). • **COLORADO** Gov. Bill Owens (R) signs a pair of bills that combine to roll back \$100 million in tax credits for Certified Capital Companies, or CAPCO's. Centennial State officials say they are the first state to end a CAPCO program, which is designed to provide venture capital to qualified companies (ROCKY MOUNTAIN NEWS).

CIVIL RIGHTS: The **MAINE** Senate narrowly rejects a proposal seeking to amend the Pine Tree State constitution to define marriage as only between a man and a woman. The House killed a similar proposal last month (KENNEBEC JOURNAL). • A **NEW HAMPSHIRE** Senate committee recommends approving a bill that would prevent the Granite State from recognizing same-sex marriages performed in other states. The bill also specifically defines marriage as only between a man and a woman (FOSTER'S DAILY DEMOCRAT). • The **KENTUCKY** House also addresses gay marriage by approving House Joint Concurrent Resolution 17, which urges the U.S. Congress to send a constitutional amendment with the "man/woman only" definition. It now moves to the Senate (COURIER-JOURNAL [LOUISVILLE]).

CRIME & PUNISHMENT: **WYOMING** Gov. Dave Freudenthal (D) signs HB 5, legislation that bars the death penalty for anyone under the age of 18. The law takes effect on July 1 (BILLINGS GAZETTE). • A **MICHIGAN** Senate committee unanimously approves legislation that would keep the names of youths convicted of having sex with underage partners off of the state's public sex offender registry. The bills now go to the full Senate (ANN ARBOR NEWS). •



The **WISCONSIN** Senate sends AB 738 to Gov. Jim Doyle (D). The bill makes it easier to prosecute stalking cases in the Badger State. Doyle has not indicated if he will sign it (**WISCONSIN STATE JOURNAL**). • The **KANSAS** Senate tentatively approves SB 275, which would allow for the construction of private prisons in the Sunflower State. The bill, designed to address overcrowding in state-run facilities, has one more Senate vote before moving on (**LAWRENCE JOURNAL-WORLD**).

EDUCATION: Citing first amendment rights, the University of Louisville refuses to ban the Ku Klux Klan from distributing literature on campus. Students had protested after the group began handing out literature at the **KENTUCKY** campus (**COURIER-JOURNAL [LOUISVILLE]**). • Still in the Bluegrass State, the **KENTUCKY** House easily approves HB 261, a bill that would require schools to limit sales of soft drinks and offer more healthy drinks instead. The bill heads to the Senate (**COURIER-JOURNAL [LOUISVILLE]**). • A **COLORADO** Legislative committee approves SB 189, legislation that would make the Centennial State the first in the nation to issue vouchers to college students. If approved, it would grant each high school graduate about \$2,500 a year to attend either a public or private university. It moves to another committee (**DENVER POST**). • Vouchers are also the hot topic in **UTAH**, where Gov. Olene Walker (R) must decide whether to sign HB 115, which allows parents of disabled students to collect vouchers of up to \$5,455 to send their kids to private schools. Walker has not said if she will sign it into law (**SALT LAKE TRIBUNE**). • The **CONNECTICUT** Senate unanimously approves a resolution asking Congress to allow the Constitution State to opt out of federal No Child Left Behind statutes if its students score in the top fifth percentile on national tests like the SAT. Several other states, including **VERMONT, VIRGINIA, HAWAII, MINNESOTA** and **UTAH**, have passed similar measures. It moves now to the House (**NEW HAVEN REGISTER**).

ENVIRONMENT: A **FLORIDA** Senate committee approves SB 1156, a bill that would assess higher fees to security guards and people with concealed weapons permits in order to fund the cleanup of Sunshine State gun ranges contaminated by lead and arsenic. (**ST. PETERSBURG TIMES**). • Wildlife officials in **ALASKA** double the size of one of the areas where aerial hunters can shoot wolves. The area, near the Interior village of McGrath, now covers 3,600 square



trary to what the Jury Patriotism Act and other similar reforms are trying to accomplish, which is get as random and good a sample as you can out of the community.”

Tom Munsterman, director for the Center for Jury Studies of the National Center for State Courts in Washington D.C. and the author of numerous national studies on the American jury system, adds that there are also several misconceptions about juries and jury service that have conspired to compound the problem.

“We don’t do a very good job of educating people about jury service in this country,” Munsterman says, noting that the way the news media covers high profile cases like those involving Martha Stewart and Kobe Bryant does not make participation very appealing.

“You see this even in how juries are portrayed in movies and on television,” Munsterman says. “Jury service is never portrayed as something good.”

Munsterman says he supports most of the reforms in the Jury Patriotism Act, but adds that the bill relies on some perceptions that are not accurate, most notably the claim that juries are predominantly comprised of older or unemployed people. “Most states do not exclude professionals anymore,” Munsterman says. “And our studies show that, if anything, there is a lack of minorities and low income representation on most juries.”

Munsterman adds that a lot of the non-response to jury duty is not because people are choosing to blow off their summons, but rather because states are still using driver’s license information to cull potential jurors.

“The bulk of non-response comes from the summons being sent to an old address,” he says. “Some states use current tax returns to draw jurors instead of driver’s licenses, which at least ensure you will have an address current to within a year.”

Many states have also gone to the “one day, one trial” system, in which prospective jurors are called in for one day, then released for at least a year if not chosen for trial. Some have altered that to “two days, one trial.” There has also been much discussion of offering tax breaks to employers who let workers go without repercussion, as well as formulating professional juries to serve on certain kinds of trials, although Munsterman says that at this time no jurisdiction is seriously considering these options.

While there is not yet consensus on the best way to reform juries, Kelso says there is one area where just about everyone agrees.

“We don’t know if getting better juries will necessarily produce better decisions,” says Kelso, “But we know for sure that everybody wants a better jury pool to choose from.”

— *By RICH EHISEN*

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Once around the statehouse lightly

D **ISTASTE BUD.** Rep. Adam Hasner knew when to fold 'em. The FLORIDA legislator last week quietly dropped a bill that would have allowed free beer-tasting at grocery, liquor and convenience stores around the state. According to the *Palm Beach Post*, the Del Ray Republican pulled the plug after the state chapter of Mothers Against Drunk Driving vowed to fight it. MADD also had some formidable and unusual allies, such as Anheuser-Busch, Coors, the Florida Beer Wholesalers Assn. and Convenience Store Assn. So, who backed it? Two companies competing for the malt beverage market. They saw it as a “choice” issue. So did Hasner. His choice was to drop the bill.

GIVE 'EM LIBERTY. When in 1997 VERMONT changed the way it pays for schools, the new system made folks mad in tony places such as Killington. That's because property taxes went up in wealthy communities like ski resorts. Last week, folks in Killington sought revenge, notes *USAToday*. They voted — overwhelmingly — to secede from Vermont and join NEW HAMPSHIRE, 25 miles to the east. “The state is treating us like a cash cow,” grumped Killington town manager David Lewis. Killington now will petition New Hampshire and lobby Vermont, because both state legislatures must approve the secession. Will it happen? Not bloody likely, say Vermont officials.

REMODELING JOB. Workmen this month will finally put the finishing touches on the east wing of the MONTANA state Capitol — a building project that started in, uh, 1911. At the time, a 924-square foot room was created, then sealed up without a door. As a result, it has never been used because only a two-foot crawl space gains entry to the room. Now, however, the *Billings Gazette* reports that a door will be added — at a cost of \$12,500. Unfortunately, the 94-year-old room does not meet current codes and so cannot be used as an office. It will serve as storage for the Senate.

GROSS INDUSTRY. It has been big business in MICHIGAN for years, but more than a few northlanders took notice in January when the city of Toronto, Canada, began shipping all of its municipal trash across the border to a landfill in Wayne County. The result, reports *The Detroit News*, is a package of bills that will



make it harder to import trash into the Wolverine State. Gov. Jennifer Granholm is expected to sign the bills. “Michigan was not meant to be the region’s trash can,” says a spokeswoman for Granholm. The bills may not put an end to the practice, however. Legal challenges are afoot from businesses that own the trash can.

PRIMARY OF THE MONTH. Although MASSACHUSETTS Sen. John Kerry has sealed up the Democratic nomination for president after a series of primary battles, the nation’s most unusual primary contest may be for the 6th House District of ILLINOIS. That would be on Chicago’s tough South Side where Democrats Aaron Patterson, Jerry Washington and Patricia Bailey have squared off. Bailey is a first-term incumbent who has the support of the city’s political elite. But as the *Chicago Tribune* reports, Patterson has backing from the district’s most formidable group — the Blackstone Rangers, a violent street gang that Patterson once helped to lead. Washington, a former legislator, is keeping a low profile. The big issue? Residency. Patterson claims that Bailey does not live in the district. Bailey has countered by reminding voters about Patterson’s residency. From 1986 to 2000, it was on Death Row. Patterson had been convicted of murdering a couple in their South Side home but was freed when former Gov. George Ryan shut down the state’s system of executing prisoners. The district itself is noteworthy in that it includes Bridgeport — home turf for the Daley clan. The election is next Tuesday.

— *By A.G. BLOCK*



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