



The Judiciary, State of Hawai'i

Testimony to the Thirty-Second State Legislature, 2024 Regular Session

Senate Committee on Ways and Means

Senator Donovan M. Dela Cruz, Chair

Senator Sharon Y. Moriwaki, Vice Chair

Wednesday, February 28, 2024 at 10:01 a.m.
State Capitol, Conference Room 308 & Videoconference

by:

Rodney A. Maile

Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2319 – Proposing an Amendment to Article VI, Section 3, of the Hawai'i State Constitution to Increase the Mandatory Retirement Age for State Justices and Judges.

Judiciary's Position:

The Hawai'i State Judiciary supports Senate Bill No. 2319, which proposes an amendment to article VI, section 3 of the Hawai'i State Constitution to raise the mandatory retirement age for state justices and judges.

Judges and justices are able to perform their judicial duties past the age of 70, and many judges and justices that were forced to retire as a result of the mandatory retirement age for state judges and justices continue to be very active in the legal community and other community-based endeavors. We believe that extending the mandatory retirement age for judges and justices from age 70 to age 75 is a reasonable balance.

Thank you for allowing us to testify on Senate Bill No. 2319.

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COMMITTEE ON WAYS AND MEANS

Senator Donovan Dela Cruz, Chair

Senator Sharon Moriwaki, Vice Chair

Wednesday, February 28, 2024

10:01 AM

STRONG SUPPORT FOR SB 2319 – INCREASING MANDATORY RETIREMENT AGE FOR JUSTICES, JUDGES

Aloha Chair Dela Cruz, Vice Chair Moriwaki and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for almost thirty years. This testimony is respectfully offered on behalf of the 3,849 Hawai'i individuals living behind bars¹ and under the "care and custody" of the Department of Corrections and Rehabilitation on February 19, 2024. We are always mindful that 858 - 44% of the male prison population of 1,963 - are serving their sentences abroad -- thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons appreciates this opportunity to testify in **strong support of SB 2319** that proposes a constitutional amendment to increase the mandatory retirement age for state justices and judges from 70 years to 75 years.

Research published by the University of Vermont's Legislative Research Shop on the Mandatory Retirement Age of Judges in 2000 gives a good overview of what other jurisdictions are doing:

*"...In a number of states conditional provisions have been accompanied with mandatory retirement ages. For example, in the state of **Florida** appellate judges who turn 70 at the midpoint of a*

¹ **DPS/DCR Weekly Population Report, February 19, 2024.**

<https://dcr.hawaii.gov/wp-content/uploads/2024/01/Pop-Reports-Weekly-2024-02-19.pdf>

² **University of Vermont, Legislative Research Shop, Mandatory Retirement Age of Judges.**

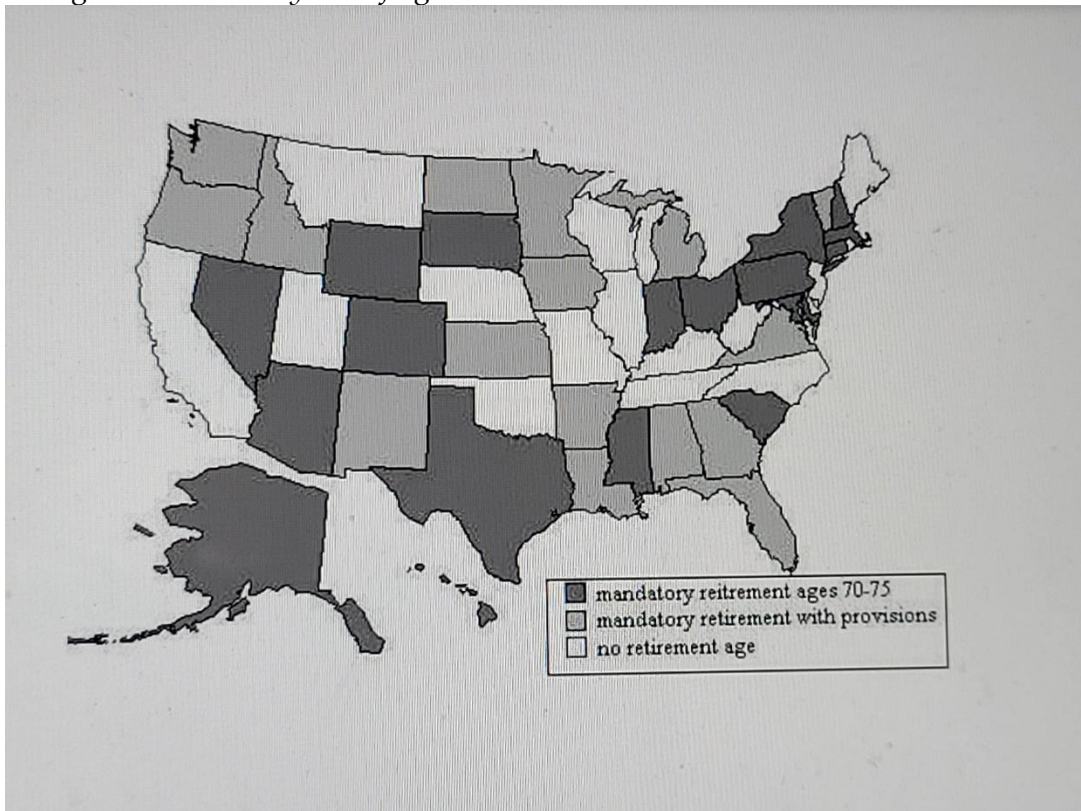
https://www.uvm.edu/sites/default/files/Department-of-Political-Science/vlrs/PoliticsGovernment/Mandatory_retirement_age_for_judges.pdf

³ **Mandatory judicial retirement ages by state as of March 14, 2022.**

https://ballotpedia.org/Mandatory_retirement

six-year term are allowed to serve out his or her term and retire at 73 (FLA Constitution. art V, sections 8). In **Ohio** any voluntarily retired judge or any judge retired at 70 may be assigned, with his consent, by the Chief Justice or acting Chief Justice of the Supreme Court to active duty as a judge and while serving will receive compensation in addition to any retirement benefits to which he may be entitled (OHIO CONST. art. IV section 6). And, in **Minnesota** the legislature may provide for the extension of the term of any judge who becomes eligible for retirement within three years after the expansion of the term for which he is selected; a retired judge may also be assigned to hear and decide any case over which the court to which he is assigned has jurisdiction. (MINN CONST.art IV.section 9 and 10).

The following map displays the states in which no mandatory retirement exists, states in which there is a mandatory retirement age but conditional provisions, and states that have mandatory retirement ages set at 70-75 years of age.²



References Makar, Scott D. 1997. "In Praise of Older Judges: Raise the Mandatory Retirement Age?" Florida Bar Journal. April 1997 v71 n4 p.48(3). Florida Constitution, article V, section 8. Ohio Constitution, article IV, section 6. Minnesota Constitution, article IV, sections 9 and 10. Parker, Deanna L. National Center for State Courts, Knowledge Management Department. Williamsburg VA.

Here is a list of states' Mandatory Retirement Age from Ballotpedia in 2022.³

List of states

State	Mandatory retirement age	Additional information
Alabama	70 ^[3]	Judges may finish the final term during which they turn 70. ^[3]
Alaska	70 ^[4]	
Arizona	70 ^{[5][6]}	

Arkansas	Judges who do not retire at 70 lose all earned retirement benefits. ^[7]	No retirement age; however, judges lose their earned retirement benefits if they choose to
California	-	No retirement age
Colorado	72 ^[9]	
Connecticut	70 ^[10]	
Delaware	-	No retirement age
District of Columbia	74 ^[11]	
Florida	75 ^[12]	Judges may finish the final term if more than one-half has been served at age 75. ^[12]
Georgia	-	No retirement age
Hawaii	70 ^[13]	
Idaho	-	No retirement age
Illinois	-	Used to be 75, but law was struck down by Illinois Supreme Court in 2009 ^{[14][15]}
Indiana	75 ^[16]	No limit for superior court and county court judges. ^[17]
Iowa	72 ^[18]	
Kansas	75 ^[19]	Judges may finish the final term during which they turn 75 ^[19]
Kentucky	-	No retirement age
Louisiana	70 ^[20]	Judges may finish the final term during which they turn 70 ^[20]
Maine	-	No retirement age
Maryland	70 ^[21]	
Massachusetts	70 ^[22]	
Michigan	70 ^[23]	Judges may finish the final term during which they turn 70. ^[23]
Minnesota	70 ^[24]	Judges must retire the last day of the month in which they have turned 70 ^[24]
Mississippi	-	No retirement age
Missouri	70/75 ^{[25][26]}	Judges other than municipal judges must retire at 70. ^[25] Municipal judges must retire at 7
Montana	-	No retirement age
Nebraska	-	No retirement age
Nevada	-	No retirement age
New Hampshire	70 ^[27]	
New Jersey	70 ^[28]	Judges serving as Administrative Director of the Courts may apply to defer retirement. ^[29]
New Mexico	-	No retirement age
New York	70 ^[30]	Judges may finish out year they turn 70. There is no retirement limit for Town and Village
North Carolina	72 ^[31]	Judges must retire the last day of the month in which they have turned 72 ^[31]
North Dakota	Judges who do not retire at 73 lose all earned retirement benefits. ^[32]	No retirement age; however, judges lose their earned retirement benefits if they do not a
Ohio	70 ^[34]	Judges may finish the final term during which they turn 70 ^[34]
Oklahoma	-	No retirement age; limit may be established by statute. ^[35]
Oregon	75 ^[36]	Limit may be reduced to as low as 70 by statute or initiative. ^[36]

Pennsylvania	75 ^[37]	Judges may finish out year they turn 75. ^[37]
Rhode Island	-	No retirement age ^[38]
South Carolina	72 ^[39]	No limit for Probate or Municipal Court judges. ^[39]
South Dakota	70 ^[40]	Judges that turn 70 may serve until the first Tuesday following a Monday of the year follo
Tennessee	-	No retirement age
Texas	75 ^{[41][42]}	Conditions may vary. See Article 5 for more information ^[41]
Utah	75 ^[43]	
Vermont	90 ^[44]	Judges may finish out year they turn 90. ^[44]
Virginia	73 ^[45]	Judge will be retired 20 days after the regular session of the General Assembly following
Washington	75 ^[46]	Judges may finish out year they turn 75. ^[46]
West Virginia	-	No retirement age
Wisconsin	-	The Wisconsin Blue Book 2005-2006 states: "Wisconsin used to have a mandatory retire 1955 to 1978, judges and justices had to retire at age 70. Since 1977, the Wisconsin Cons impose a maximum age of no less than 70, but the legislature has not done so." ^[47]
Wyoming	70 ^[48]	

Community Alliance on Prisons is concerned about losing all that institutional knowledge that justices and judges have acquired through the years and, therefore, we urge the committee to pass this constitutional amendment so that the community can weigh in on this important question.

SB-2319

Submitted on: 2/26/2024 8:54:59 AM

Testimony for WAM on 2/28/2024 10:01:00 AM

Submitted By	Organization	Testifier Position	Testify
Vanessa McCowan	Individual	Oppose	Written Testimony Only

Comments:

Absolutely NOT. The age of our representatives, both elected and appointed should NOT be increased. We are seeing massive dissilusionment of our political system wherein in the next election we are being asked to select from two old men who are two steps from the grave. These elders should be RETIRED. At 70, they no longer represent the people they serve - they represent an age gone by. If anything, we should be reducing the ages of retirement so that our officials can more accurately be representative of the people.

Older people are not uniformly unfit to serve - but they are at a much higher chance of having cognitive problems which subtly (or overtly) change their ability to complete their work in a wholly unbiased and of sound mind manner.

It is inappropriate for people over 70 to sit in positions of power and I OPPOSE this measure.

SB-2319

Submitted on: 2/27/2024 9:24:35 AM

Testimony for WAM on 2/28/2024 10:01:00 AM

Submitted By	Organization	Testifier Position	Testify
Victor K. Ramos	Individual	Oppose	Written Testimony Only

Comments:

Oppose. Age 70 is a great age to retire and enjoy the rest of your life with your family. Family is more important than prestige.