

The Judiciary, State of Hawai'i

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

House Committee on Judiciary and Hawaiian Affairs

Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Wednesday, March 20, 2024 at 2:00 p.m.
State Capitol, Conference Room 325 & 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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March 19, 2024

**TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER, STATE OF HAWAII
TO THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS**

**S.B. 2319: PROPOSING AN AMENDMENT TO ARTICLE VI, SECTION 3 OF
THE HAWAII STATE CONSTITUTION TO INCREASE THE
MANDATORY RETIREMENT AGE OF STATE JUSTICES AND
JUDGES.**

Hearing: March 20, 2024 at 2:00 p.m.

**Chair David A. Tarnas
Vice Chair Gregg Takayama
Honorable Committee Members**

The Office of the Public Defender (OPD) supports this bill.

In recent years a number of judges and justices have been forced to retire at age 70. These judges and justices were competent, contributing members of the judiciary and were retired not due to an inability to perform their duties at the highest levels but simply because they had reached mandatory retirement age. Currently, three circuit judges and Chief Justice Mark Recktenwald will be forced into retirement due to their ages. The fact that many of the retired judges and justices continue to be active in the legal community evidences that they should not have been forced into retirement simply because of age. Indeed, older judges and justices bring invaluable experience and knowledge to the bench. If the mandatory retirement age is not raised from 70 to 75, some current judges and justices will similarly be forced to retire in the upcoming years simply due to age and not due to competency.

The OPD supports this bill. Thank you for the opportunity to comment on S.B. 2319.

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COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Representative David A. Tarnas, Chair

Representative Gregg Takayama, Vice Chair

Wednesday, March 20, 2024

Room 325 & Videoconference

2:00 PM

STRONG SUPPORT of SB 2319 - CON AM: RETIREMENT AGE OF JUSTICES & JUDGES

Aloha Chair Tarnas, Vice Chairs Takayama, 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 3,842 Hawai'i individuals living behind bars¹ and under the "care and custody" of the Department of Corrections and Rehabilitation of March 11, 2024.

We are always mindful that 858 men who are serving their sentences abroad (44% of the male prison population of 1,964) 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.

Ballotpedia published a list of the Mandatory Judicial Requirement Ages by State². Here is a quick and easy breakdown:

- **16 STATES HAVE NO RETIREMENT AGE** (California, Delaware, Georgia, Idaho, Illinois, Kentucky, Maine, Mississippi, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Rhode Island, Tennessee, West Virginia)
- **1 STATE HAS THE MOST ADVANCED RETIREMENT AGE - 90 YEARS** (Vermont)

¹ DPS/DCR Weekly Population Report, March 11, 2024.

<https://dcr.hawaii.gov/wp-content/uploads/2024/03/Pop-Reports-Weekly-2024-03-11.pdf>

² Mandatory judicial retirement ages by state as of March 14, 2022.

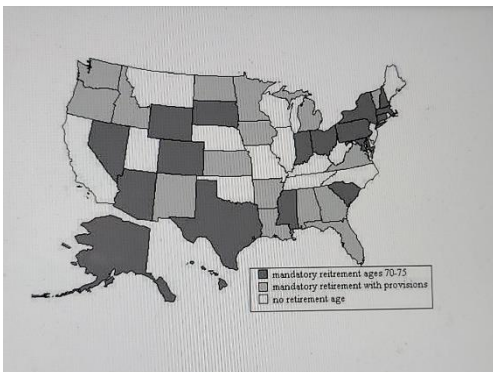
https://ballotpedia.org/Mandatory_retirement

- **8 STATES HAVE 75 YEARS AS RETIREMENT AGE** (Florida, Indiana, Kansas, Oregon, Pennsylvania, Texas, Utah, Washington)
- **19 STATES HAVE 70 YEARS AS RETIREMENT AGE** (Alabama, Alaska, Arizona, Arkansas, Connecticut, Hawai`i, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, South Dakota, Wisconsin, Wyoming)
- **6 STATES HAVE RETIREMENT AGES BETWEEN 71 - 74 YEARS** Colorado (72), District Of Columbia (74), Iowa (72), North Dakota (73), South Carolina (72), Virginia (73)

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 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.³



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.

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 bill so that the community can weigh in on this important ballot question.

³ 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

SB-2319

Submitted on: 3/19/2024 4:17:57 PM

Testimony for JHA on 3/20/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Golojuch Jr	Stonewall Caucus of the Democratic Party of Hawai‘i	Support	Remotely Via Zoom

Comments:

Aloha Representatives,

The Stonewall Caucus of the Democratic Party of Hawai‘i; Hawai‘i’s oldest and largest policy and political LGBTQIA+ focused organization fully supports SB 2319.

We hope you all will support this important piece of legislation.

Mahalo nui loa,

Michael Golojuch, Jr. (he/him)
Chair and SCC Representative
Stonewall Caucus of the Democratic Party of Hawai‘i

SB-2319

Submitted on: 3/19/2024 7:36:58 AM

Testimony for JHA on 3/20/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ellen Godbey Carson	Individual	Support	Written Testimony Only

Comments:

I support this bill. I am a former president of the Hawaii State Bar Association and Hawaii Women Lawyers, and have know many great judges whose careers have been cut short by our early retirement mandate.

We are losing too many judges who are in their prime, because they are required to retire at age 70. Seventy-five is a more reasonable retirement time and would give us those 5 additional years of expertise and experience.

Thank you for consideration of my testimony.

Ellen Godbey Carson, Honolulu, Hawaii

SB-2319

Submitted on: 3/19/2024 3:27:57 PM

Testimony for JHA on 3/20/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Daphne Barbee	Individual	Support	Written Testimony Only

Comments:

Dear Seanators:

I am a practicing attorney in the State of Hawaii. I urge you to pass this law to increase the retirement age of State Judges from 70-75 years young. In the federal judiciary, appointed Judges have no age limits and are appointed for life. In Hawaii I have seen good judges take retirement at 70 years young, when they could have continued beyond that age. Presently, the two Presidential candidates are beyond 70 years old and yet they will rule the United States upon election. Please pass this bill. I always thought the law of 70 years young was in violation of the Age discrimination in employment Act, but no one to my knowledge challenged their forced retirement in a law suit.

Daphne Barbee-Wooten, Atty.


SB-2319

Submitted on: 3/20/2024 6:44:33 AM

Testimony for JHA on 3/20/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Leimomi Khan	Individual	Support	Written Testimony Only

Comments:

Aloha, I continue to support this bill after consideration of the following:  1. According to the National Center for Health Statistics, life expectancy has increased to an average of 80.4 years for Hawai'i. Increasing the mandatory retirement age of judges to 75 would allow the court to retain experienced, knowledgeable judges.

2. Further any issues relating to health and mental capacity can be addressed during the Judicial Selection Commission's review of petitions by judges to be retained in office as provided by the Hawai'i State Constitution, Art VI, Section 3, Tenure, i.e., "...at least six months prior to the expiration of a justice's or judge's term of office, every justice and judge shall petition the judicial selection commission to be retained in office or shall inform the commission of an intention to retire. If the judicial selection commission determines that the justice or judge should be retained in office, the commission shall renew the term of office of the justice or judge for the period provided by this section or by law. Further, the Hawai'i State Constitution , Art VI, Section 5 provides the Supreme Court the authority to retire or remove from office any judge for disability.

3. Lastly, regarding career growth and infusion of new ideas – no doubt increasing the retirement age of judges to 75 will likely have an impact on career growth and infusion of new ideas in the Judiciary, yet, in balance, the more critical need in the Judiciary is experienced judges who bring years of knowledge and experience and therefore are able to better assess the situations in which he or she will likely rule and be able to logically analyze the legal issue. Too, professional organizations of lawyers can help to infuse new ideas into the Judiciary.

