

The Judiciary, State of Hawai'i

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

House Committee on Judiciary & Hawaiian Affairs

Representative David A. Tarnas, Chair

Representative Gregg Takayama, Vice Chair

Tuesday, February 13, 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: House Bill No. 2509 – 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 House Bill No. 2509 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 House Bill No. 2509.

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COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Representative David A. Tarnas, Chair

Representative Gregg Takayama, Vice Chair

Tuesday, February 13, 2024

2:00 PM

STRONG SUPPORT FOR HB 2509 - INCREASING MANDATORY RETIREMENT AGE FOR JUSTICES, JUDGES

Aloha Chair Tarnas, Vice Chair 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 3,845 Hawai'i individuals living behind bars¹ and under the "care and custody" of the Department of Public Safety/Corrections and Rehabilitation on February 5, 2024. We are always mindful that 857 (25%) of the male imprisoned population 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 HB 2509** 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 from 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 5, 2024.

<https://dcr.hawaii.gov/wp-content/uploads/2024/01/Pop-Reports-Weekly-2024-02-05.pdf>

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

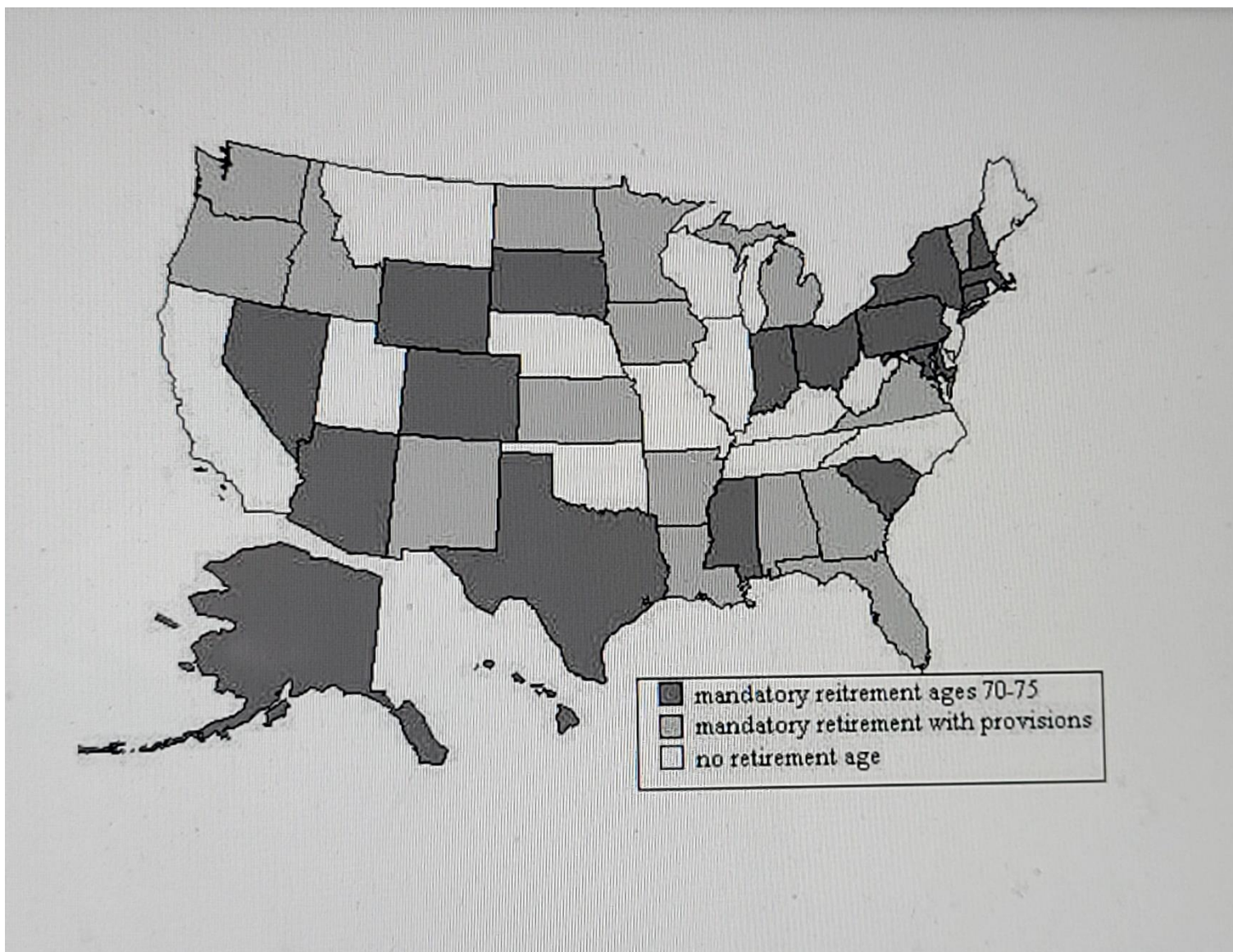
https://www.uvm.edu/sites/default/files/Department-of-Political-Science/vlrs/PoliticsGovernment/Mandatory_retirement_age_for_judges.pdf

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

Here is a list of states 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 the 70. ^[8]
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.
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
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.
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 Judges .
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 turn 73. ^[33]
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 legislature election. ^[40]
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
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 retirement age for judges and justices. From 1955 to 1978, judges and justices had to retire at age 70. Since 1978, the legislature has authorized the legislature to impose a maximum age of no less than 70, but the legislature has not done so."
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 question.

TESTIMONY IN SUPPORT OF H.B. 2509
CONSTITUTIONAL AMENDMENT; RETIREMENT AGE OF JUSTICES
AND JUDGES
HOUSE JUDICIARY AND HAWAIIAN AFFAIRS COMMITTEE

Tuesday, February 13, 2024, 2:00PM

WRITTEN TESTIMONY ONLY

FROM ROBERT D. S. KIM

TESTIMONY IN SUPPORT OF RAISING THE RETIREMENT AGE

Chairman Tarnas and Members of the Committee:

I am in support of raising the retirement age as proposed in the above house bill. I am writing this testimony as an individual and not as Chief Judge of the Third Circuit Court. The current law deprives our state of experienced judges and does not have any reasonable basis for requiring judges to retire at age 70. I will age out in July of 2024. My term of office expires in 2027.

Passage of this legislation will not impact my circumstance as it will take effect after I am to age out, but I come to you, on behalf of all the other qualified judges who will be affected in the future. Experience is a plus for judges. The Hawaii State Judiciary has gained parity between men and women judges. Women judges will be impacted the most, as their life expectancy is greater than their male counterparts.

As a former trial lawyer, I can advise you that attorneys desire experience in our judges and justices. I sincerely urge you to consider passage of this important legislation. Thank you.