

Gavel to Gavel

A review of state legislation affecting the courts

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Focus: Mandatory Retirement Ages For Judges

Most state judges face mandatory retirement, usually at 70 or 72. As the Baby Boom generation ages, life expectancies increase, and veteran and able jurists are forced into retirement, states have begun to reexamine the practice. Pending legislation on the subject includes:

[Alabama HB 537 \(Constitutional Amendment\)](#) Increases mandatory retirement age from 70 to 72.

[Arizona SCR 1040 \(Constitutional Amendment\)](#) Increases mandatory retirement age from 70 to 75.

[Massachusetts HB 1640](#) Increases mandatory retirement age from 70 to 76.

[New Hampshire CACR 21 \(Constitutional Amendment\)](#) Eliminates mandatory retirement at 70.

[New Jersey AB 611](#) Increases mandatory retirement age from 70 to 75.

[New Jersey ACR 70 \(Constitutional Amendment\)](#) Increases mandatory

retirement age from 70 to 75.

[New York SB 6254 \(Constitutional Amendment\)](#) Eliminates mandatory retirement at 70.

[Virginia HB 126](#) Increases mandatory retirement age from 70 to 73.

[Virginia SB 206](#) Adjusts the mandatory retirement age under judicial retirement for judges, justices, and members of the State Corporation Commission from 70 to 73.

[Virginia SB 44](#) Increases the mandatory retirement age for district court judges only from 70 to 76.

[Washington HB 2489](#) Eliminates mandatory retirement age.

[Washington HJR 4216 \(Constitutional Amendment\)](#) Removes mandatory retirement age.

[Wyoming HB 37](#) Eliminates mandatory retirement age.

[Wyoming HJR 4 \(Constitutional Amendment\)](#) Eliminates mandatory retirement age.



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Selection: Newly Introduced

[Alabama HB 542 \(Constitutional Amendment\)](#) Requires the nonpartisan election of Circuit, District, and all appellate court judges. In House Judiciary Committee.

[Illinois HCA 45 \(Constitutional Amendment\)](#) Provides for the appointment of Supreme and Appellate Court Judges, and Circuit Judges in the First Judicial District and circuits adopting merit selection by referendum, by the Governor from nominees submitted by Judicial Nominating Commissions. Permits other Judicial Circuits to adopt by referendum a plan for merit selection of Circuit Judges. Provides that Judicial Review Commissions shall be established to decide whether appointed Judges shall be retained. Provides for Associate Judges to be phased out in the First Judicial District and in circuits adopting merit selection. In House Rules Committee.

[Illinois SCA 91 \(Constitutional Amendment\)](#) Repeals provisions concerning the office of Associate Judge. Provides that Associate Judges in office on the effective date of this amendment assume the office of Circuit Judge on that date. Deletes provisions for election of Appellate and Circuit Judges and provides for their appointment by the Supreme Court. Provides for Judicial Nominating Commissions to nominate persons for appointment as Appellate and Circuit Judges. In Senate (no committee).

[Iowa HJR 2014 \(Constitutional Amendment\)](#) Ends state's merit selection system. Permits governor to unilaterally

appoint any person to fill a judicial vacancy who is a member of the Iowa bar and a resident. In House Judiciary Committee.

[Iowa SJR 2006 \(Constitutional Amendment\)](#) Permits Governor to reject list of 3 names submitted to fill Supreme Court vacancies by the judicial nominating commissions. In Senate Judiciary Committee.

[Michigan SJR 21 \(Constitutional Amendment\)](#) Eliminates the designation of incumbency on judicial ballots. In Senate Committee on Campaign and Election Oversight.

[Minnesota SB 2367](#) Requires executive secretary of Board on Judicial Standards be confirmed by Senate. In Senate Judiciary Committee.

[Oregon SB 1058](#) Sets campaign contribution limits for judicial and other races. Individuals: \$1,000 for a candidate for the Supreme Court, Court of Appeals or Oregon Tax Court and \$500 for all judicial other races. Sets limits on PACs and "small donor organization" groups. In House Rules Committee.

[Utah SB 210](#) Eliminates witnesses who have testified in cases considered by the judge from the list of mandatory survey respondent groups. Expands the survey topic of "judicial temperament" to include questions about judicial demeanor and personal attributes that promote trust and confidence in the judiciary. In Senate Judiciary, Law Enforcement, and Criminal Justice Committee.

Selection: Floor and Committee Activity

[Hawaii SB 2156](#) AS AMENDED:

Authorizes appointment of judge or justice as Administrative Director of the Courts for no more than two years, and allows the appointed person to retain the salary and benefits of the judicial position. Approved as amended by Senate Committee on Judiciary and Government Operations 2/4/10.

[Mississippi SB 3033](#) Prohibits judicial candidates from qualifying before January 1 of the year in which the election is held. Approve by full Senate 2/10/10.

[New Hampshire HB 1307](#) Requires the executive council to hold a public hearing prior to its confirmation of the appointment of a marital master. Requires the governor and council to review the performance of a marital master and hold a public hearing prior to his or her reappointment. Clarifies that reappointed marital masters shall serve for 3-year terms. No recommendation by House Judiciary Committee 2/10/10.

[Utah SB 108](#) AS AMENDED: Requires governor, in consultation with the Judicial Council, create rules for procedure for judicial nominating commissions. Requires judicial nominating commissions submit 7 names to governor to fill vacancies (currently 3-5 for appellate and 5 for trial). Requires governor ensure the recruitment period to fill a judicial vacancy begins 235 days before the effective date of a vacancy, or within 10 days if there is no prior notice and that recruitment take between 30-90 days, unless 9 or more applications are

received, in which case an extra 30 days may be added. Requires commissions meet within 10 days of close of recruitment. Requires governor fills vacancies within 30 days, or else Chief Justice must do so within 20 days of governor's failure. Requires Senate confirm nominees submitted by governor within 60 days. Failure to confirm in 60 days requires nominating process restart. Requires commissions, governor, chief justice, and Senate fill judicial vacancies without regard to any partisan political considerations. Makes staff of Appellate Court Nominating Commission a member of the Governor's staff (currently, state court administrator is Commission secretary). Grants Governor power to name staff of Trial Court Nominating Commissions (currently, state court administrator). Requires Governor ensure commissions follow applicable rules and statutes (currently, job of Chief Justice). Prohibits commission members from being nominated to fill a judicial vacancy for up to 6 months after service. Suspends various recruitment and nominating deadlines established above in the event of a hiring freeze as defined by S.B. 232 of 2010 (assuming S.B. 232 is enacted). Advanced to 3rd reading by full Senate 2/5/10.

[Utah SB 109](#) AS AMENDED: Removes Supreme Court's power to name Chief Justice and grants it to the Governor. Extends Chief Justice's term to six years (note: does NOT extend term as Justice of the Supreme Court) and prohibits Chief Justice from serving successive terms. Permits Supreme Court to name Associate Chief Justice only and extends term to three years. Advanced to 3rd reading by full Senate 2/9/10.

[Washington SB 5912](#) Provides for the public funding for supreme court campaigns. Approved by Senate Committee on Ways & Means 2/9/10.

Qualifications and Terms: Newly Introduced

[Alabama HB 537 \(Constitutional Amendment\)](#) Increases mandatory retirement age for judges from 70 to 72. In House Judiciary Committee.

[West Virginia SB 495](#) Requires magistrates possess a bachelor's degree or an associate's degree in criminal justice or four years of experience as a magistrate. In Senate Judiciary Committee.

Qualifications and Terms: Floor and Committee Activity

[Indiana HB 1061](#) AS AMENDED; Provides that an individual elected to the office of circuit court clerk after November 2, 2010, must complete at least 15 hours of training courses within one year, and 40 hours of training courses within three years after beginning the individual's term as circuit court clerk. Training courses to be developed by the Association of Indiana Counties and approved by the State Board of Accounts. Approved by Senate Judiciary Committee 2/11/10.

[New Hampshire CACR 21 \(Constitutional Amendment\)](#) Eliminates mandatory retirement at 70 for judges. Rejected by House Judiciary Committee 2/10/10.

[Oregon SJR 48 \(Constitutional Amendment\)](#) Provides a person serving as a judge shall be eligible to be employed by the State Board of Higher Education or a school board for the purpose of teaching, and employment by the State Board of Higher Education or a school board for the purpose of teaching shall not prevent the person from serving as a judge. Approved as amended by Senate Education and General Government Committee 2/11/10.

[Virginia HB 241](#) AS AMENDED: Requires the General Assembly to approve retired judges for service under temporary recall. Permits chief judge of the Court of Appeals, and the chief judges of the various circuit courts to recall retired judges back into temporary service (currently, only chief justice may do so). Approved as amended by House Committee for Courts of Justice 2/12/10.

[Virginia HB 572](#) Provides a procedure for the assumption of the duties of a chief judge of a district court and notification of other judges in the event the chief judge is unable to perform his duties. Approved by House Committee for Courts of Justice 2/10/10.

[Virginia SB 206](#) Adjusts the mandatory retirement age under judicial retirement for judges, justices and members of the State Corporation Commission from 70 to 73. Approved by full Senate 2/8/10.

[Wyoming HB 37](#) Repeals mandatory retirement age for judges and justices. Effective only on condition constitutional amendment approved at 2010 general election. Approved by House Judiciary Committee 2/12/10.

[Wyoming HJR 4 \(Constitutional Amendment\)](#) Repeals mandatory retirement age for judges and justices. Approved by House Judiciary Committee 2/12/10.

Rule Making Authority: Newly Introduced

[Illinois HB 5351](#) Provides that the Illinois Supreme Court or any circuit court of may adopt rules permitting the use of video conferencing equipment in all court hearings, subject to certain criteria. In House Rules Committee.

[Kentucky HB 407](#) Requests Supreme Court create a pilot project for a limited opening of courts in three to seven jurisdictions when handling dependency, needy, neglect, and abuse cases involving children and termination of parental rights. In House Judiciary Committee.

Rule Making Authority: Floor and Committee Activity

[New Hampshire HB 1564](#) Establishes the authority and procedure for the regulation of attorneys by the supreme court. Removes the requirement in the election or appointment of the county attorneys that the person be a member of the state bar. Rejected by House Judiciary Committee 2/10/10.

[New Hampshire SB 356](#) Requires writs and processes in civil actions to be in the form provided in rules adopted by the Supreme Court. Approved by full Senate 2/10/10.

[Virginia HB 1065](#) Establishes electronic filing of cases in circuit courts by providing for acceptance of electronic images as original documents for filing and recording, and for the attachment of electronic seals or stamps for original signatures and notarizations in civil cases. The circuit court clerk may require each person whom the clerk authorizes to file documents electronically to enter into an agreement specifying the electronic filing procedures to be followed for transmitting signed or notarized documents. However, the bill does not allow for electronic filing in certain classes of cases where particular forms are specified by statute (e.g., creation and execution of wills, codicils, testamentary trusts, premarital agreements, and negotiable instruments). Approved by full House 2/10/10.

[Virginia HB 242](#) Removes the requirement that the Committee on District Courts and the Supreme Court certify vacancies in the judiciary prior to the legislature filling those vacancies. Approved by House Committee for Courts of Justice 2/12/10.

[Virginia HB 293](#) Clarifies that the Executive Secretary of the Supreme Court's responsibility as administrator of the circuit court system does not supersede the authority of the circuit court judges over running the court itself (e.g., setting terms of court, dockets, control of the courtroom, etc.). Approved by House Committee for Courts of Justice 2/12/10.

Structure Changes: Newly Introduced

[Alabama SB 410](#) Authorizes any judicial circuit in state to start a drug court program. In Senate Judiciary Committee.

[Georgia SB 395](#) Permits any court with criminal jurisdiction to create a mental health court division. In Senate Committee on Judiciary.

[Kansas SB 541](#) Delays expansion of court of appeals from 13 to 14 judges until 2012. In Senate Judiciary Committee.

[West Virginia HB 4352](#) Authorizes the West Virginia Supreme Court of Appeals to create a Business Court Division within certain circuit court districts. In House Judiciary Committee.

Structure Changes: Floor and Committee Activity

[Hawaii HB 1942](#) Establishes a temporary Hawaii Veterans Court within the Judiciary to help address prison overcrowding. Approved by House Judiciary Committee 2/11/10. Approved by House Finance Committee 2/12/10.

[New Mexico HB 229](#) AS AMENDED: Requires creation of “metropolitan courts” in counties with a population of more than 300,000 (currently 200,000). Approved by House Judiciary Committee 2/10/10. Approved by House Finance Committee 2/12/10.

[Virginia SB 158](#) AS AMENDED: Allows, but expressly does not require, the establishment of mental health courts as specialized court dockets within any circuit or district court. Approved as amended by Senate Finance Committee 2/11/10.

[Virginia SB 592](#) Allows in specified area(s) the establishment of servicemembers and veterans courts as specialized court dockets within the existing structure of Virginia's court system. Creates state military members and veterans court advisory committee. Grants Supreme Court of Virginia administrative oversight for the implementation of the Act. Incorporated into SB 158 by Senate Committee for Courts of Justice 2/8/10.

Jurisdiction: Newly Introduced

[Iowa HB 2313](#) Prohibits judges from using “judicial precedent, case law, penumbras, or international law as a basis for rulings.” Requires judges use only the U.S. and Iowa Constitutions and the Code of Iowa in making decisions. Permits use of the Federalist papers and other writings of the founding fathers, but only if such source material is used in full context. Prohibits any court from reviewing the legislation. Deems any violation grounds for impeachment. In House Judiciary Committee.

[Kansas HCR 5031](#) Declares any order of the court directing the legislature to appropriate a specific level of funding is viewed as advisory in nature. Declares that no public moneys or moneys derived from the imposition of any tax shall be expended to finance or support litigation challenging the constitutionality of the amount of any

legislative appropriation. In House Judiciary Committee.

[Utah HB 296](#) Requires Utah courts apply United States and Utah law in cases and controversies before them unless the foreign law sought to be applied would provide protection equal to or stronger than specific elements of United States and Utah law. In House Law Enforcement and Criminal Justice Committee.

[West Virginia HB 4365](#) Increases magistrate court's jurisdiction from \$5,000 to \$15,000. In House Judiciary Committee.

Jurisdiction: Floor and Committee Activity

[Hawaii HB 2784](#) ORIGINAL: Increases small claims jurisdiction from \$3,500 to \$7,000. AMENDED: Increases small claims jurisdiction from \$3,500 to \$4,500. Allows either plaintiff or defendant to make use of small claims proceeding. Sets effective date as December 21, 2058. Approved as amended by House Judiciary Committee 2/12/10. In House Finance Committee.

[New Mexico HJM 38](#) Requests administrative office of the courts conduct a study in the need for class A counties to have a special judge or special master to hear code enforcement cases. Approved by full House 2/9/10. Approved by Senate Judiciary Committee 2/14/10.

[Wisconsin AB 524](#) ORIGINAL: Increases the general jurisdictional amount in money judgment small claims actions from \$5,000 to \$10,000 if and only if the claimant has commenced 20 or fewer such actions within

the previous 365 days. Increases filing fees from \$22 to \$33 if filing more than 20 small claims cases in previous 365 days.

AMENDED: Same, but reduces top limit to \$8,000. Approved as amended by Assembly Judiciary Committee 2/5/10.

Salary and Budget: Newly Introduced

[Georgia SB 389](#) Requires judicial branch report to Auditor and post on website all expenditures, including federal pass-through moneys. In Senate Committee on State and Local Governmental Operations.

[Illinois HB 5481](#) Creates a second tier for judges and others part of the judge's retirement system that enter the system after 2010. In House Rules Committee.

[Illinois HB 5673](#) Caps the salary, earnings, or compensation used in determining retirement annuities for persons who first enter the judge's retirement system on or after July 1, 2010 at the Governor's salary on the date of the participant's retirement. In House Rules Committee.

[Illinois SB 3508](#) Provides that each Circuit Court Clerk shall charge and collect an electronic citation fee of \$5, which shall be paid by the defendant in any traffic, misdemeanor, municipal ordinance, or conservation case upon a judgment of guilty or grant of supervision. Provides that 60% of the fee shall be deposited into the Circuit Court Clerk Electronic Citation Fund and 40% of the fee shall be disbursed to the arresting agency to defray expenses related to the establishment and maintenance of

electronic citations. In Senate (no committee).

[Oregon HB 3696](#) Directs Oregon Department of Administrative Services to use moneys in Oregon Judicial Facilities Fund for purpose of financing construction and maintenance of county court facilities. In House Ways and Means Committee.

[Rhode Island HB 7448](#) Brings the policies regarding retirement of members of the Rhode Island Judiciary and State Police in conformity with state employees. In House Finance Committee.

[Utah SB 232](#) Allows a judicial hiring freeze to be implemented during a General Fund deficit for the juvenile court, district court, appellate court, or any combination of these courts. Specifies that a judicial hiring freeze shall be established for a specified period of time. In Senate Judiciary, Law Enforcement, and Criminal Justice Committee.

Salary and Budget: Floor and Committee Activity

[Kansas SB 461](#) Creates district magistrate judge supplemental compensation fund in state treasury and allows counties to place money into this fund for the explicit purpose of giving additional salaries to the county's magistrates judges. Approved by Senate Ways and Means Committee 2/10/10.

[Maryland SJR 4](#) Sets judicial salaries for 2011-2013. Approved as amended by Senate Budget and Taxation Committee 2/12/10.

[Missouri SB 767](#) Removes the restriction on certain counties using a court fee for

courtroom renovation and technology. Approved by Senate Judiciary Committee 2/8/10.

[New Hampshire HB 1512](#) Allows judges who resign from office to elect to receive a deferred retirement benefit under the judicial retirement plan. Approved by Executive Departments and Administration Committee 2/10/10.

[New Hampshire SB 357](#) Authorizing the judicial retirement plan to deduct a health insurance premium contribution from allowances. Approved by Senate Executive Departments and Administration Committee 2/10/10.

[New Mexico HJM 55](#) Requests public employees retirement association, with the administrative office of the courts, study the feasibility of converting the judicial retirement system and the magistrate retirement system to actuarially sound, salary-based retirement systems, emphasizing statutory employee and employer contributions, and to provide a plan and an analysis that includes appropriate contribution levels, retirement eligibility, the feasibility of merging the plans and other actuarial issues that may arise during the study. Approved by House Judiciary Committee 2/12/10.

[New Mexico SB 226](#) Creates magistrate courts operations fund in the state treasury for appropriation by the legislature for the operations of magistrate and metropolitan courts. Creates temporary new magistrate court operations fee of \$4.00, to be credited to the magistrate courts operations fund. Specifies other fees to go towards magistrate

courts operations fund. Requires any balances in the fund at the end of FY2014 revert to the General Fund. Approved by Senate Finance Committee 2/9/10. Approved by full Senate 2/11/10.

[South Dakota HB 1081](#) Increases unified judicial system court automation surcharge for various filings and fines. Approved by full House 2/9/10.

[Virginia HB 1196](#) Allows the Executive Secretary of the Supreme Court to employ staff from state funds specifically appropriated to him for that purpose. Approved by House Committee for Courts of Justice 2/12/10.

[Virginia SB 258](#) Creates a local fee retention funding method for circuit court clerks' offices in which the clerk retains fees locally and pays 20 percent of gross fees to the state to be held by the Compensation Board in a trust fund beginning July 1, 2012. Requires trust fund be used to fund those offices that did not receive enough revenue in fees to maintain operations. Gives the clerk discretion in docketing judgments in favor of the Commonwealth, and removes the prohibition against charging fees for certain orders, entries, and documents. Carried over into 2011 session by Senate Finance Committee 2/10/10.

[Virginia SB 329](#) Increases the court fees in both district and circuit court from (i) \$27 to \$75 in a district court civil action and (ii) the current scale of \$60-\$160 to \$500-\$1,000 in civil actions in circuit court. The fee increases under this bill in district court are allocated to the sheriffs' departments, and the increases in circuit court are split

between the sheriffs' (85%) and the commonwealth attorneys' (15%) offices to be used exclusively for achieving the current staffing standards of the two constitutional offices. The \$10 fee for the Courts Technology Fund is removed from civil cases. The Fund still receives fees applicable to other filings in the circuit and appellate courts. Approved by Senate Finance Committee 2/10/10.

[Washington SB 5523](#) Adds new provisions regarding court commissioners' ability to accrue retirement benefits. Approved by full Senate 2/10/10.

Other: Newly Introduced

[Florida HB 7031](#) Repeals requirement that Supreme Court and Circuit Courts meet at certain regular terms. In Criminal & Civil Justice Policy Council.

[Kentucky SB 146](#) Adds domestic relations commissioners, master commissioners, and trial commissioners of the Court of Justice to persons who, if licensed to carry a concealed deadly weapon, may carry them at all locations within the Commonwealth except as specifically provided therein. In Senate Judiciary Committee.

[Wyoming HB 8](#) Includes in definition of "peace officer" court security officers. In House Judiciary Committee.

[Wyoming SB 68](#) Includes in definition of "peace officer" court security officers. In Senate Judiciary Committee.

Other: Floor and Committee Activity

[Colorado HJR 1011](#) Concurs in Governor's request to the Colorado Supreme Court for an advisory opinion on Colorado laws in light of Citizens United v. Federal Election Comm'n. Approved by full House and Senate 2/10/10.

[Hawaii HCR 8](#) Requests judiciary and other branches remove portraits of jurists and other officials that served in the provisional government after 1893. Approved by House Committee on Hawaiian Affairs 2/10/10.

[Hawaii SB 409](#) Requires the circuit court clerks to keep their offices open during convenient hours during those days on which that office is required to be open. Relieves the clerk of certifying local officers lists to the Secretary of the Commonwealth, by imposing that requirement on the locality itself, and of maintaining a list or book of local active volunteer fire fighters, by imposing that duty on the state Department of Fire Programs. Requires the clerk to record only those writings specifically required by law to be recorded. Repeals several small monetary forfeitures imposed on the clerk for failure to (i) provide the Department of Corrections with copies of orders, (ii) record certificates of satisfaction as required, and (iii) perform any duty generally. Approved as amended by Senate Committee for Courts of Justice 2/8/10. Approved by full Senate 2/11/10.

[Mississippi SB 2040](#) Requires Justice Courts set aside one-half day a month to hear only traffic cases. Approved by full Senate 2/9/10.

[New Hampshire HB 1410](#) Prohibits lobbyists from serving on judicial branch commissions, committees, boards, or similar government entities. Referred to Interim Study Committee by House Judiciary Committee 2/10/10.

[New Hampshire HB 1689](#) Exempts state's Judicial Council and Judicial Retirement Plan Board of Trustees from repeal on June 30, 2011. Approved by House Legislative Administration Committee 2/10/10.

[New Mexico HJM 42](#) Requests AOC convene a task force and conduct a study to identify ways to increase efficiency and reduce the burden on county detention facilities of housing arrestees held on felony charges or for violations of parole and probation. Requires study also consider ways to expedite the judgment and sentencing process, reduce the transfer time of arrestees to prison, expedite the scheduling of probation revocation hearings and identify best practices that maximize the most efficient and effective length of stay for arrestees according to the law. Approved by full House 2/11/10.

[New Mexico HJM 50](#) Requests the administrative office of the courts and other agencies study the need to license language support professionals to help ensure that limited English speaking persons are represented and receive due process in all aspects of state government, especially those relating to legal and medical services. Approved by House Consumer and Public Affairs Committee 2/11/10.

[New Mexico HJR 10 \(Constitutional Amendment\)](#) Adds one municipal judge to judicial standards commission. Approved by House Voters & Elections Committee 2/9/10.

[Virginia SB 220](#) Establishes electronic filing of cases in circuit courts by providing for acceptance of electronic images as original documents for filing and recording, and for the attachment of electronic seals or stamps for original signatures and notarizations in civil cases. Exempts from e-filing program cases where particular forms are specified by statute. Approved by full Senate 2/8/10.