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MANDATORY RETIREMENT AGES FOR JUDGES

The president of the United States appoints federal judges for lifetime terms with no mandatory retirement age, but states handle their judicial retirements in several different ways.

The majority of states require judges to retire from the bench upon reaching a certain age, typically an age established in the state's constitution. Thirty-two states and the District of Columbia have mandatory retirement ages, though the specific ages and the procedures for the retirement of sitting judges vary. Nineteen states, including Wisconsin, either currently have no mandatory retirement age or have a retirement age that is undetermined or unenforceable.

American law generally disfavors mandatory retirement ages, but state and federal laws permit many positions to include a mandatory retirement age. These requirements are much more common in government positions, from military to law enforcement to elected officials, than in the private sector. In fact, elected public officials are specifically excluded from the protections of the federal Age Discrimination in Employment Act, which leaves states free to impose retirement age requirements on their public officials.

STATES WITH NO MANDATORY RETIREMENT AGE

Seventeen states have no constitutional or statutory mandatory retirement age for judges. Two additional states, Illinois and Wisconsin, ostensibly have mandatory retirement ages in their constitutions, but those ages are not enforced. In 2009, the Illinois Supreme Court found the retirement age re-

quirement to be unconstitutional under the Illinois Constitution. In Wisconsin, the legislature has not yet set a specific retirement age.

Arkansas is unique among states with no mandatory retirement age. Because any judge in the state who seeks reelection after his or her seventieth birthday forfeits his or her state retirement benefits, there is a strong incentive to voluntarily step down from the bench. The remaining states that have no mandatory retirement age are silent on the subject.

TYPES OF MANDATORY RETIREMENT AGES IN OTHER STATES

Thirty-one states require mandatory retirement for judges who reach a certain age. The states fall broadly into three categories: a strict age requirement after which judges may not serve; a requirement to retire during the calendar year in which a particular age is reached; or a requirement to retire following the completion of a term of office after a particular age is reached.

Strict Mandatory Retirement Age

Twenty states enforce strict mandatory retirement ages for judges with few, if any, exceptions or allowances to finish a calendar year or term of office. Of those states, 13 mandate retirement at age 70, and the remaining seven require retirement at ages 71 to 75.

Mandatory Retirement During Calendar Year

Six states require judges to retire during the year in which they reach a certain age, rather than immediately upon their birthdays.

Four of those states permit judges to continue to serve on the bench until the completion of the calendar year in which he or she reaches a certain age. One of those states, Vermont, has the highest mandatory retirement age in the country – 90 years old – while the remaining three, New York, Pennsylvania, and Washington, set an age between 70 and 75.

The other two states that permit judges to remain on the bench past their birthdays, Minnesota and North Carolina, require judges to step down at the end of the month in which they reach the mandatory retirement age, which is 70 in Minnesota and 72 in North Carolina.

Mandatory Retirement upon Completion of Term of Office

Five states, Florida, Kansas, Louisiana, Ohio, and Texas, require judges to retire upon reaching a set age but permit those judges to continue serving on the bench until their terms of office expire. Kansas and Texas require retirement at the end of a term during which a judge turns 75, and the other three states require the same of judges who turn 70. Florida permits retired judges to finish a term of office only if more than half of the term has been served before a judge reaches the retirement age of 70. Texas’s requirement varies depending on the age of the judge and the length of his or her term.

MANDATORY RETIREMENT FOR SPECIAL OR LESSER COURT JUDGES

Many of the states that enforce mandatory retirement ages allow for judges to continue to serve on the bench for special proceedings, like grand jury investigations, or in lesser capacities, such as probate referees or municipal court judges. States tend to permit lesser court judges to stay on the bench longer than judges in courts of record (i.e., district, appellate, and supreme courts), and some states that require mandatory retirement for

judges in courts of record have no mandatory retirement age at all for lesser court judges.

Many state laws also permit supreme court chief justices or other court personnel to assign judges to temporarily serve in appellate or district courts for a certain time or for a specific case regardless of the judge’s age or retirement status.

MANDATORY RETIREMENT AGE IN WISCONSIN

Wisconsin does not enforce a mandatory retirement age for judges, but there is a provision in the state constitution that requires the legislature to set an age by statute, and to set it at age 70 or older. Although there has been discussion of setting a retirement age in past legislative sessions, to this point no legislation has been introduced.

The Original Constitutional Retirement Age in Wisconsin

The Wisconsin Constitution was silent on the issue of judicial retirement until article VII, section 24, of the Wisconsin Constitution, which required judges to step down from the bench at the end of the month in which they turn 70, was approved by Wisconsin voters in April 1955. That requirement remained in effect until 1968, when it was amended to reflect the judicial calendar, which ended on July 31 of each year. Voters approved an amendment to the retirement age that eliminated the “end of the month” requirement and replaced it with a requirement to step down on or before July 31 during the year in which judges reached the age of 70. The new July 31 requirement was in effect for nine years, until another constitutional amendment was approved by the voters in 1977.

The Constitutional Requirement to Set a Statutory Retirement Age in Wisconsin

In April 1977, the Wisconsin Constitution was again amended in a way that affected judicial retirement, this time as part of a reor-

ganization of the entire judicial branch. The 1977 amendment removed the strict requirement that judges in courts of record retire at age 70 and replaced it with language that continues in effect today, which requires the legislature to establish a retirement age for judges by statute, and requires the age itself to be set no younger than 70 years of age.

Although the mandatory retirement age was removed from the constitution by the

1977 amendment, a law that mirrored the previous constitutional language remained in the statutes. Section 41.11 (2), Wisconsin Statutes, remained in force and required judges to retire by July 31 during the year in which they turned 70, even after voters removed the same requirement from the constitution. The section was finally repealed in 1984 and the retirement age language was not replaced.

Mandatory Judicial Retirement Age in the States

State	Mandatory Retirement Age	Citation to Statute or Constitutional Provision
Alabama	70	Constitution article VI, amendment 328
Alaska	70	Constitution article IV, section 11
Arizona	70	Constitution article VI, sections 20 and 39
Arkansas	None ¹	
California	None	
Colorado	72	Constitution article VI, section 23
Connecticut	70	Constitution article V, section 6
Delaware	None	
District of Columbia	74	Statute section 1-204.31 (c)
Florida	70	Constitution article V, section 8
Georgia	None	
Hawaii	70	Constitution article VI, section 3
Idaho	None	
Illinois	None ²	Statute 705 ILCS 55/1
Indiana	75 ³	Statute IC 33-38-13-8
Iowa	72	Statute section 602.1610
Kansas	75	Statute section 20-2608(a)
Kentucky	None	
Louisiana	70	Constitution article V, section 23
Maine	None	
Maryland	70	Constitution article IV, section 3
Massachusetts	70	Constitution article 1, chapter 3 of part 2, amendment article XCVIII
Michigan	70	Constitution article VI, section 19
Minnesota	70	Statute sections 490.125 and 490.121
Mississippi	None	
Missouri	70	Constitution article V, section 26
Montana	None	
Nebraska	None	
Nevada	None	
New Hampshire	70	Constitution article 78
New Jersey	70	Constitution article XI, section IV
New Mexico	None	
New York	70	Constitution article VI, section 25
North Carolina	72	Statute section 7A-4.20
North Dakota	None	
Ohio	70	Constitution article IV, section 6 , part (C)
Oklahoma	None	
Oregon	75	Constitution article VII, section 1a
Pennsylvania	70	Constitution article V, section 16
Rhode Island	None	
South Carolina	72	Statute section 9-8-40 and 9-8-60
South Dakota	70	Statute section 16-1-4.1 and 16-6-31
Tennessee	None	
Texas	75	Constitution article 5, section 1-a
Utah	75	Statute section 49-18-701
Vermont	90	Statute section 4-15-609
Virginia	70 ⁴	Statute section 51.1-305 (B1)
Washington	75	Constitution article IV, section 3(a)
West Virginia	None	
Wisconsin	None ⁵	
Wyoming	70	Constitution title 5, chapter 1, section 106

¹Arkansas judges lose earned retirement benefits if they seek reelection after age 70 (Arkansas Code section 24-8-215 (c)).

²The Illinois Constitution requires judges to retire at age 75, but the provision was found unconstitutional by the Illinois Supreme Court in 2009.

³Indiana’s retirement age applies only to appellate and supreme court judges, not district court judges.

⁴Virginia law permits judges to remain on the bench after their seventieth birthday for up to 20 days following the convening of the next regular session of the General Assembly.

⁵Since 1977, article VII, section 24 of the Wisconsin Constitution has authorized the legislature to adopt a retirement age of no less than 70, but the legislature has not done so.