

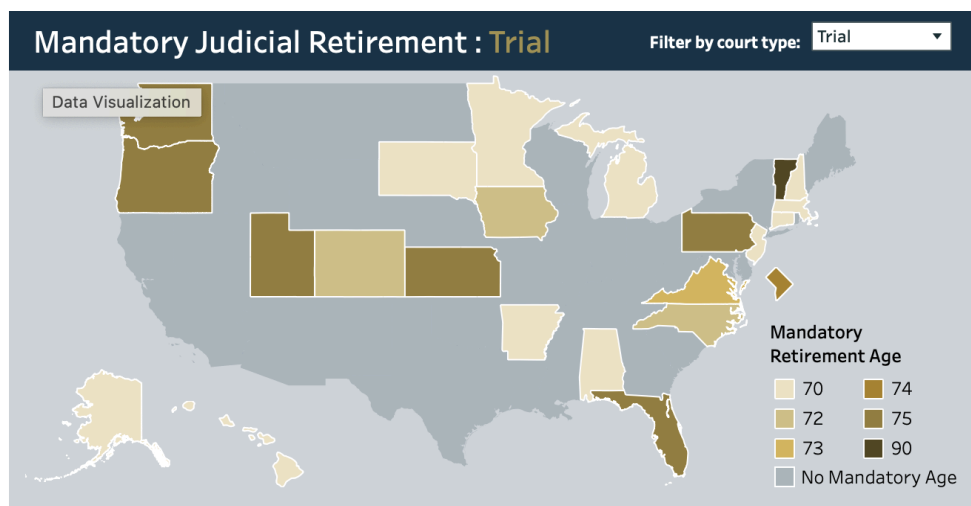
To: Members of the Senate Judicial Proceedings Committee
From: Maryland State Bar Association (MSBA)
Subject: SB 74 – Judges – Mandatory Retirement Age
Date: January 21, 2025
Position: **Informational**

The Maryland State Bar Association (MSBA) files informational testimony on **Senate Bill 74 – Judges – Mandatory Retirement Age**. SB 74 proposes an amendment to the Maryland Constitution to raise the mandatory retirement age of all judges in the State from 70 to 75; and submits the amendment to the qualified voters of the State of Maryland for their adoption or rejection.

MSBA represents more attorneys than any other organization across the state in all practice areas. Through its advocacy committees and various practice-specific sections, MSBA monitors and takes positions on legislation that protects over 42,000 legal professionals, preserves the integrity of the judicial system, and ensures access to justice for Marylanders. MSBA appreciates this opportunity to provide information on proposed changes to the retirement age given the potential impact on MSBA members, the public, and the state’s judicial systems.

State Court and Workforce Trends

The majority of states set a mandatory retirement age between 70-75 years: eighteen states (including Maryland) have a mandatory retirement age of 70, six states set the age between 72-74, and eight states require judges to retire at 75. Vermont sets the highest mandatory retirement age at 90 years. Seventeen states have no age limit for judges. Some states, including Arkansas and North Dakota, encourage retirement by retracting retirement benefits if judges do not retire after reaching a certain age.¹



¹ National Center for State Courts, *Mandatory Retirement Age Tracker* (December 2023).
<https://www.ncsc.org/salarytracker/special-reports/retirement-map-and-states>

According to the Bureau of Labor Statistics, employment of individuals aged 65 and above has grown by 117% within 20 years (from 1994-2014). The Bureau expects an increase of over 96% of the labor force for individuals 75 and older by 2030. All other labor force age groups are projected to decline or remain steady by 2023.²

Recent Ballot Measures and Legislative Action

As people work later into life and longer-serving judges bring experience to the bench, some states have tried to raise or repeal the mandatory retirement age. Recent attempts have mostly focused on raising the mandatory retirement age above age 70 and have had mixed results, mostly through ballot measures. Voters have rejected the measures in the majority of cases.

- Rejected an increase in retirement age: New Hampshire (2024), Texas (2023), Wyoming (2022), Hawaii (2014), New York (2013), Arizona (2012), Ohio (2011).
- Approved an increase in retirement age: Florida (2018), Pennsylvania (2016), Virginia (2015 through Legislature).

Recent attempts by states to repeal the retirement age by amendment have failed: Oregon (2016), Louisiana (2014).

How Raising the Retirement Age May Impact the State and Courts

Given increased life expectancy and the institutional memory that older judges may provide, some argue to increase the retirement age. They note that the existing judicial discipline system serves as an appropriate check to remove those from the bench who are unable to serve for various reasons, including age-related declines, and that a higher retirement age can help remedy judicial shortages and allow experienced judges to move through dockets and case backlogs. Raising the retirement age may allow those who enter the legal profession later in life or lawyers who have a wide range of professional experiences an opportunity at a judgeship in their mid to late sixties. Additionally, the state may save financially in pension contributions if the retirement age is extended. Advocates also note that neither federal judges nor any other Maryland elected officials face similar age restrictions on holding office.

Opponents of an increase in the retirement age look to the declining public perception of judges and the legal profession, and voice concerns that increasing the retirement age may keep judges on the bench who may have improper biases, political influence, or other disqualifiers that are not mitigated through the current judicial discipline system. By maintaining the current retirement age, judicial diversity (including race, gender, age, and professional background) may expand to allow new viewpoints and younger lawyers an earlier opportunity to fill judicial vacancies. Opponents of an age increase highlight Maryland's senior judges system, available to both state and federal retired judges, where they may continue to sit as senior judges after they retire, with no age restrictions. This system allows judges to continue serving while creating a judicial vacancy for the President or Governor to appoint a new judge.

² Bureau of Labor Statistics, "Number of People 75 and Older In the Labor Force Is Expected to Grow 96.5% by 2030" (November 4, 2021).
<https://www.bls.gov/opub/ted/2021/number-of-people-75-and-older-in-the-labor-force-is-expected-to-grow-96-5-percent-by-2030.htm>

Recent retirement data for Maryland state justices and judges from 2021-2024 shows a slightly higher number of judges retiring prior to age 70 than those that retire at 70, outside of election years. The number of judges retiring before 70 increases before judicial election years. The highest category of judges who retire before 70 is circuit court judges. The majority of retired judges at all levels returned as senior judges in this time frame, with 100% of judges from the district, circuit and intermediate appellate court returning to senior status after retiring at age 70.³

Maryland Justices and Judges Retirement Statistics for the period of January 1, 2021 - August 20, 2024					
	Number of Justices/Judges Retiring Prior to Age 70	Number of Justices/Judges Returning As Senior Judges		Number of Justices/Judges Retiring At Age 70	Number of Justices/Judges Returning As Senior Judges
Court of Appeals	0	0		4	3
Court of Special Appeals	0	0		1	1
Circuit Courts	25	20		17	17
District Court	10	8		6	6
TOTAL	35	28		28	27

MSBA is committed to supporting an efficient, fair, and impartial judiciary, representative of the profession, and thanks the Committee for considering this issue and other reforms to the judicial selection and retention system.

Contact: Shaoli Sarkar, Advocacy Director (shaoli@msba.org, 410-387-5606)

³ Maryland Judiciary data (August 27, 2024).