LEGISLATIVE COMMITTEE MINUTES

CACR12

Bill as Introduced

CACR 12 - AS INTRODUCED

2021 SESSION

21-0875 04/11

CONSTITUTIONAL AMENDMENT
CONCURRENT RESOLUTION 12

RELATING TO:

the retirement age for judges.

PROVIDING THAT:

the mandatory retirement age for judges is repealed.

SPONSORS:

Sen. D'Allesandro, Dist 20; Sen. Prentiss, Dist 5; Sen. Kahn, Dist 10; Sen.

Cavanaugh, Dist 16; Sen. Soucy, Dist 18; Sen. Sherman, Dist 24

COMMITTEE:

Judiciary

ANALYSIS

This constitutional amendment concurrent resolution repeals the mandatory retirement age for judges.

.

Explanation:

Matter added to current law appears in bold italics.

Matter removed from current law appears [in brackets and struckthrough.]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

CONCURRENT RESOLUTION PROPOSING CONSITUTIONAL AMENDMENT

RELATING TO:

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the retirement age for judges.

PROVIDING THAT:

the mandatory retirement age for judges is repealed.

Be it Resolved by the Senate, the House of Representatives concurring, that the Constitution of New Hampshire be amended as follows:

I. That article 78 of the second part of the constitution be amended to read as follows:

[Art.] 78. [[Judges and] Sheriffs, When Disqualified by Age.] No person shall hold the office of

[Judge of any Court, or Judge of Probate, or] Sheriff of any county, after [he] such person has

attained the age of seventy years.

- II. That the above amendment proposed to the constitution be submitted to the qualified voters of the state at the state general election to be held in November, 2022.
- III. That the selectmen of all towns, cities, wards and places in the state are directed to insert in their warrants for the said 2022 election an article to the following effect: To decide whether the amendments of the constitution proposed by the 2021 session of the general court shall be approved.
 - IV. That the wording of the question put to the qualified voters shall be:
- "Are you in favor of amending article 78 of the second part of the constitution to read as follows:
 - [Art.] 78. [Sheriffs, When Disqualified by Age.] No person shall hold the office of Sheriff of any county, after such person has attained the age of seventy years."
 - V. That the secretary of state shall print the question to be submitted on a separate ballot or on the same ballot with other constitutional questions. The ballot containing the question shall include 2 squares next to the question allowing the voter to vote "Yes" or "No." If no cross is made in either of the squares, the ballot shall not be counted on the question. The outside of the ballot shall be the same as the regular official ballot except that the words "Questions Relating to Constitutional Amendments proposed by the 2021 General Court" shall be printed in bold type at the top of the ballot.
 - VI. That if the proposed amendment is approved by 2/3 of those voting on the amendment, it becomes effective when the governor proclaims its adoption.
 - VII. Voters' Guide.
 - AT THE PRESENT TIME, a judge must retire by the age of 70.
- 26 IF THE AMENDMENT IS ADOPTED, there shall be no mandatory retirement age 27 for a judge.

Committee Minutes

AMENDED SENATE CALENDAR NOTICE Judiciary

Sen Sharon Carson, Chair Sen Bill Gannon, Vice Chair Sen Harold French, Member Sen Rebecca Whitley, Member Sen Jay Kahn, Member

Date: January 13, 2021

HEARINGS

	Tuesday	01/19/2	01/19/2021		
	(Day)	(Dat	(Date)		
Judiciary		REMOTE	1:00 p.m.		
(Name of	Committee)	(Place)	(Time)		
1:00 p.m.	SB 40	relative to informed consent to search a moto	or vehicle.		
1:15 p.m.	SB 41	relative to police disciplinary hearings.			
1:30 p.m.	SB 39	exempting information and records contained personnel files from disclosure under the rig			
1:45 p.m.	CACR 12	relating to the retirement age for judges. Pr mandatory retirement age for judges is repe	.=		

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

- 1. Link to Zoom Webinar: https://www.zoom.us/j/95984454365
- 2. To listen via telephone: Dial(for higher quality, dial a number based on your current location):
- 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
- 3. Or iPhone one-tap: 13126266799,,95984454365# or +16465588656,,95984454365#
- 4. Webinar ID: 959 8445 4365
- 5. To view/listen to this hearing on YouTube, use this link:

https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA

6. To sign in to speak, register your position on a bill and/or submit testimony, use this link: http://gencourt.state.nh.us/remotecommittee/senate.aspx

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-6931).

EXECUTIVE SESSION MAY FOLLOW

Sponsors: SB 40

Sen. French

Sen. Avard

Sen. Gannon

Sen. Reagan

Sen. Rosenwald

Sen. D'Allesandro

Sen. Ward

SB 41

Sen. French

Sen. Reagan

SB 39 Sen. Carson CACR 12

Sen. D'Allesandro Sen. Soucy

Se

Sen. Prentiss Sen. Sherman Sen, Kahn

Sen. Cavanaugh

Jennifer Horgan 271-7875

Sharon M Carson Chairman

Senate Judiciary Committee

Jennifer Horgan 271-7875

CACR 12, relating to the retirement age for judges. Providing that the mandatory retirement age for judges is repealed.

Hearing Date:

January 19, 2021

Time Opened:

5:17 p.m.

Time Closed:

5:35 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley

and Kahn

Members of the Committee Absent: None

Bill Analysis:

This constitutional amendment concurrent resolution repeals the

mandatory retirement age for judges.

Sponsors:

Sen. D'Allesandro

Sen. Prentiss

Sen. Kahn

Sen. Cavanaugh

Sen. Soucy

Sen. Sherman

Who supports the bill: Senator D'Allesandro; Senator Soucy; Senator Sherman; Representative Horrigan

Who opposes the bill: Nicole Fordey

Summary of testimony presented in support: Senator D'Allesandro

- This bill repeals the mandatory retirement age for judges.
- When the NH Constitution was created the average life expectancy was around 50 years, now it is 80 and beyond.
- Has seen wonderful judges have to leave once they reach the age of 70.
- We are losing the experience, insight and judicial temperament of these judges that they get from being on the bench for an extended period of time.
- NH has judges that get appointed later in life and as a result their time on the bench is quite limited.
- Having a retirement age has been thrown out nationally.
- NH has had two chief justices retire because of age; one is now a member of the House, believes he has a companion piece of legislation to this.
- Senator French asked if at Senator D'Allesandro's age, does he now look at 70-year-olds as a bunch of kids.
 - o Treats them as if they are children.
- Senator Kahn asked if the intent of the legislation is to cover all judges in NH.

- o Correct.
- Senator Whitley asked what other states are doing with this.
 - o Does not have a good answer to that. NH is unique. In many other states they elect judges, with no age restrictions. NH appoints judges and we have the mandatory retirement. Will get that information for her.
- Senator Gannon asked if there is a shortage of judges or lawyers applying to be judges in NH.
 - Does not know how many people have applied to be judges, but knows that we have many vacancies, including on the Supreme Court. We need more people in the judicial branch, as attorneys have a hard time getting court dates.
- Senator Gannon stated that there are a lot of attorneys chomping at the bit to move up as judges. Raised the concern of older judges having lost a few mental steps over the years and individuals not feeling like they can tell a judge that it might be time to step down.
 - We used to retire pilots at a certain age, and we have extended that now. What we have done in the past decades is recognize that older people have a much better grasp than before and are not limited in their thought processes as they were in the past. Thinks 70 should not mean someone must retire. We can gain a lot by this. There is judicial review in NH.

Representative Horrigan

- Thinks it should go farther and include sheriffs.
- There is the ability to remove a judge if it becomes necessary; the House did that about 10 years ago and it was pretty painful.
- There is a similar bill to this coming through on the House side.
- Senator Gannon raised the concern of having to tell judges that they need to step down.
 - o That can happen before the age of 70. Maybe the legislature needs to look at reviewing that process. From what he has seen it is not that easy to fill a judicial appointment.

Summary of testimony presented in opposition: None

jch

Date Hearing Report completed: January 22, 2021

Speakers

Name	Support: 4 Oppose: 1 Title	Neutral: 0 Total		<u> </u>	Signed Up
D'Allesandro Lou	An Elected Official	+ · 	+		+
		SD20	+ ••	Yes	1/14/2021 9:38
Horrigan Timothy	An Elected Official	Myself	Support	No	1/15/2021 9:45
Fordey Nicole	A Member of the Public	Myself	Oppose	No	1/19/2021 9:36
soucy donna	An Elected Official	SD 18	Support	No	1/15/2021 15:24
Sherman Senator Tom	An Elected Official	SD 24	Support	No	1/14/2021 8:13

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Testimony

Testimony In Favor of CACR 12: "CONCURRENT RESOLUTION PROPOSING CONSITUTIONAL AMENDMENT RELATING TO: the retirement age for judges"

NH State Rep. Timothy Horrigan (Strafford #6) January 19, 2021 Senate Judiciary Committee

I support CACR 12, although I think it doesn't go far enough.

I co-sponsored a very similar CACR 10 years ago, CACR 21 (2011), which sought to strike the entierty of Article 78 Part 2nd. It fell just a little short of passing the House: it failed by a vote of 286-32.

The age limits in Article 78 might have made more sense in the past. But, today 70 is now a much younger age than it used to be. Also, in the past judges and other officials had no retirement system and the judicial branch was less professionalized than it is today. It is now easier to induce non-performing judges, of whatever age, to retire. If for whatever reason a judge does not perform his or her duties and cannot be convinced to step down voluntarily, there are a variety of remedies which can be applied—such as a "house address" resolution or even an impeachment trial.

I still support eliminating the age limit for sheriffs. A maximum age limit for any office is undemocratic. The office of Sheriff happens to be the only elected office with a maximum age. Oddly, the election laws make no special provisions for sheriff candidates: the laws merely say that a candidate for any office must meet the age and domicile requirements at the time of the general election— even if a candidate for Sheriff would be over 70 before his or her term as sheriff expired.

NH State Rep. Timothy Horrigan (Strafford #6) 7A Faculty Road; Durham, NH 03824

ph: (603) 868-3342

email: TimothyHorrigan@icloud.com

Jennifer Horgan

From:

Lou D'Allesandro

Sent:

Wednesday, January 20, 2021 7:59 AM

To:

Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer

Horgan

Subject:

Follow up on CACR12

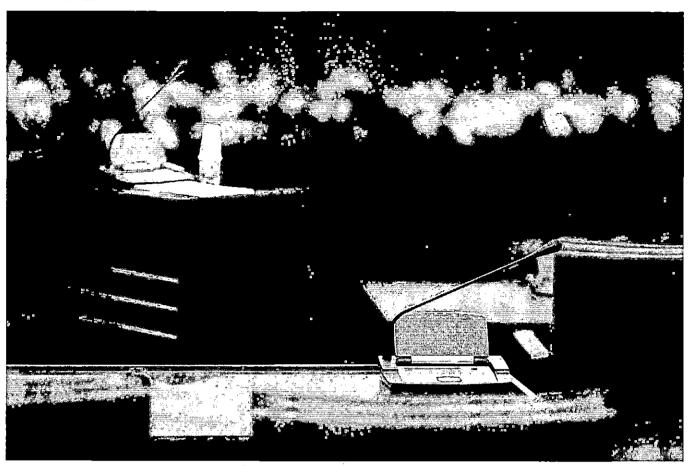
Committee members,

I submit this to you as a follow up to my testimony yesterday on CACR12. https://www.ncsc.org/information-and-resources/trending-topics/trending-topics-landing-pg/mandatory-judicial-retirement

Thank you for your consideration.

Senator Lou D'Allesandro





Mandatory judicial retirement

September 30, 2020

As Americans live longer, a persistent question is how long they can remain active in the workforce. While most government officials have no age limit to their service, the same is not true for the majority of state judges. This situation is unique to the United States. As a recent article in The Atlantic noted, in all other western countries, judges do not face any sort of mandatory retirement age. The question is: why?

First, it should be noted that mandatory judicial retirement ages came into the United States relatively early on. For example, New York placed a mandatory judicial retirement age of 60 for its judges shortly after the Revolution. When writing the Federalist Papers for a mostly New York audience, Alexander Hamilton noted this practice and how it would not apply to federal judges (who would serve "during good behavior"). The concern expressed at the time was that judges would age into "inability", shorthand for judges that were physically and/or mentally unable to continue in office.

Second, the practice arose at a time when there was little to no recourse to remove a judge who had reached the point of "inability." The only real option for removing a judge at the time was to conduct an impeachment proceeding which was both time-consuming and difficult to put together at a time when state legislatures only met for a few months a year.

Since then states have developed ways to address judges who have aged into "inability" via removal processes associated with judicial disciplinary and/or fitness proceedings. Nevertheless, most states still impose a mandatory retirement age on judges, as seen in the table below. The U.S. Supreme Court upheld the practice in 1991 in *Gregory v. Ashcroft* (501 U.S. 452). Moreover, when the question is placed on the ballot (as is necessary where the age is put into the state's constitution) voters tend to reject efforts to increase or eliminate such ages.

NCSC has produced several products on the question of judicial retirement in the last several years.

<u>Happy Birthday!</u> Now get out. This 2016 article examples the development of the retirement ages historically and efforts since 1990 to remove or eliminate mandatory age requirements.

<u>Increasing or Repealing Mandatory Judicial Retirement Ages</u>. Written as part of the Trends Monthly series this article examines arguments put forward in support of, and in opposition to, increasing or repealing mandatory judicial retirement ages.



Do judges in your state have a mandatory retirement age? Should they? Follow the National Center for State Courts on Facebook, Twitter, Instagram, or Pinterest, and share your experiences! For more information, contact Knowledge@ncsc.org or call 800-616-6164.

Judicial Retirement Ages

State	Appellate Judges	Trial Judges	Basis for Age: Constitution or Statute	Notes
Alabama	70	70	Constitution: Art. VI, Sec. 155 (Amended), Amendment 328	May not be elected or appointed after 70.
Alaska	70	70	Constitution: Art. IV, Sec. 11	
Arizona	70	70/Varies	Constitution: Art. VI, Secs. 20 & 39	Municipal courts: Varies. 2012 constitutional amendment to raise to 75 rejected by voters (27% yes)
Arkansas	70	70	Arkansas law does not specify a retirement age for judges, however a judge that fails to resign at the end of the term in which they reach 70 forfeits all pension/retirement benefits. See Arkansas Code § 24-8-215(c)	Retirement statute upheld by state supreme court in 2016 in Landers v. Stone (2016 Ark. 272496 S.W.3d 370)
California				
Colorado	72	72	Constitution: Art. VI, Sec. 23	
Connecticut	70	70	Constitution: Art. V, Sec. 6	
Delaware		1		
District of Columbia	74	74	Statute: 1-204.31(c)	
Florida	75	75	Constitution: Art. V, Sec. 8	Increase from 70 to 75 as part of Amendment 6 of 2018.
Georgia		Some but not all Municipal courts have mandatory retirement ages.	,	
Hawaii	70	70	Constitution: Art. VI, Sec. 3	2014 constitutional amendment to raise age to 80 rejected (22% yes)



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Illinois	•	•	Constitution: Art. 6, Sec. 15	May serve out term in which turns 75. Statute was declared by the Supreme Court of Illinois to be unconstitutional, as written, because the Act violated the doctrine of equal protection. See: Maddux v. Blagojevich, 233
			Statute: 705 ILCS 55/1*	
Indiana	75		Statute: IC 33-38-13-8	
lowa	72	72	Statute: 602.1610	
Kansas	75	75	Statute: 20-2608(a)	May serve out term in which turns 75.
Kentucky				
Louisiana	70	70/None	Constitution: Art. V, Sec. 23	May serve out term in which turns 70. Mayors' court judges have no age limit. 2014 constitutional amendment to repeal failed (42% yes)
Maine		•		
Maryland	70	70/None	Constitution: Art. IV, Sec. 3	Orphan's Court judges have no mandatory retirement age.
Massachusetts	,70	70	Constitution: Art. 1, Part 2, Ch. 3	
Michigan	70	70	Constitution: Art. VI, Sec. 19	May not be elected or appointed after 70.
Minnesota	70	70	Constitution: Art. 6, Sec. 9	May serve to end of month turns 70.
			Statute: 490.121(21d) & 490.125	
Mississippi				
Missouri	70	70/75	Constitution: Art. V, Sec. 26	70 for Circuit Court, 75 for Municipal Court.
			Statute: 479.020(7)	
Montana				
Nebraska		-		
Nevada				
New Hampshire	70	. 70	Constitution: Art. 78	



New Mexico				1
New York	70	70/None	Constitution: Art. VI, Sec. 25	Generally: May serve until end of year in which 70 is reached. Town/Village: No age limit. 2013 constitutional amendment to raise age rejected (40% yes)
North Carolina	72	72	Constitution: Art. IV, Sec. 6	May serve to end of month turns 72.
			Statute: 7A-4.20	
North Dakota	-			
Ohio :	70	70/None	Constitution: Art. IV, Sec. 6	Section interpreted as meaning may serve until end of term turns 70. Mayors' court judges have no age limit. 2011 constitutional amendment to raise to 75 rejected by voters (38% yes).
Oklahoma				
Oregon	75	75	Constitution: Art. VII (Amended), Sec. 1a	Constitution allows age to be reduced to as low as 70 by statute or initiative. Constitutional Amendment to repeal rejected by voters in 2016.
Pennsylvania	75	75	Constitution: Art. V, Sec. 16	May serve until end of year in which 75 is reached. Constitutional amendment raising age to 75 approved by 50.88% of voters in November 2016.
Rhode Island				
South Carolina	72	72/None	South Carolina law does not specify a retirement age for judges, however a judge that fails to resign at 72 does not obtain pension/retirement benefits. See South Carolina Code § 9-8-40 & 9-8-60	No limit for Probate or Municipal Courts.
South Dakota	70	70	Statute: 16-1-4.1	May serve into the January after attaining age 70.
Tennessee				
Texas	74	74/None	Constitution: Art. 5, Sec. 1-a	Legislature may set at any age from 70 to 75. District & Criminal District Court: May serve out term in which turns 75 if completed at least 4 years of 6 year term. Municipal: Varies All other trial courts: No limit.
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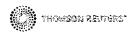


Vermont	90	90	Constitution: Sec. 35	Legislature may set anywhere from end of the calendar year in which judge attains 70 to end of the term when judge attains 90. Legislature has opted for end of year attain 90.
			Statute: 4-609	
Virginia	73	73	Constitution: Art. VI, Sec. 9	May serve until 20 days after the convening of the next regular session of the General Assembly. Increase from 70 to 73 for all appellate judges and some trial judges approved by legislature in 2015 (HB 1984). Increase from 70 to 73 for remaining trial judges approved in 2016 (HB 1245).
			Statute: 51.1-305(B1)	
Washington	75	· 75	Constitution: Art. IV, Sec. 3(a)	May serve until end of year in which 75 is reached.
West Virginia				
Wisconsin				
Wyoming	70	70/None	Constitution: Art. 5, Sec. 5	District: 70 Circuit & Municipal: None

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National Center for State Courts 300 Newport Ave, Williamsburg VA 23185 Phone: (800) 616-6164



Voting Sheets

Senate Judiciary Committee EXECUTIVE SESSION RECORD

2021-2022 Session

	Bill # CACK 12
Hearing date:	<u> </u>
Executive Session date:	
Motion of: 1TL	Vote: 5-0
Committee Member Made by Secon	d Yes No
Sen Carson, Chair	
Sen. Gannon, V-Chair	
Sen. French	The state of the s
Sen. Kahn	
Sen-Whitley	
Motion of: Consent	Vote:
Committee Member Made by Secon	d Yes No
Sen. Carson, Chair	
Sen. Gannon, V-Chair	
Sen. Kahn	
Sen-Whitley	
Motion of:	Vote:
Committee Member Made by Secon	d Yes No
Sen. Carson, Chair	
Sen. Gannon, V-Chair	
Sen. Kahn	
Sen. Whitley	The state of the s
B. I. I. Glance	
Reported out by: Gannon	
Notes:	

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Wednesday, March 10, 2021

THE COMMITTEE ON Judiciary

to which was referred CACR 12

AN ACT

relating to the retirement age for judges. Providing that the mandatory retirement age for judges is repealed.

Having considered the same, the committee recommends that the Bill

IS INEXPEDIENT TO LEGISLATE

BY A VOTE OF: 5

Senator Bill Gannon For the Committee

Jennifer Horgan 271-7875

JUDICIARY

CACR 12, relating to the retirement age for judges. Providing that the mandatory retirement age for judges is repealed.

Inexpedient to Legislate, Vote 5-0. Senator Bill Gannon for the committee.

General Court of New Hampshire - Bill Status System

Docket of CACR12

Docket Abbreviations

Bill Title: relating to the retirement age for judges. Providing that the mandatory retirement age for judges is repealed.

Official Docket of CACR12.:

Date	Body	Description
1/13/2021	S	Introduced 01/06/2021 and Referred to Judiciary; SJ 3
1/14/2021	S	Remote Hearing: 01/19/2021, 01:45 pm; Links to join the hearing can be found in the Senate Calendar; SC 7
3/10/2021	S	Committee Report: Inexpedient to Legislate, 03/18/2021; SC 15
3/18/2021	S	Sen. Bradley Moved Laid on Table, RC 19Y-6N, MA; 03/18/2021; SJ 8
3/18/2021	S	Pending Motion Inexpedient to Legislate; 03/18/2021; SJ 8

NH House	 NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number	Senate Committee: <u>Juli (1947)</u>
	e all documents in the order listed below and indicate the documents which have been an "X" beside
<u> </u> Final	docket found on Bill Status
Bill Hearing	Documents: {Legislative Aides}
★ Bill v	ersion as it came to the committee
	alendar Notices
	ng Sign-up sheet(s)
X Prepa	red testimony, presentations, & other submissions handed in at the public hearing
1	ng Report
1/A	ed/Amended Fiscal Notes provided by the Senate Clerk's Office
Committee A	Action Documents: {Legislative Aides}
All amendmen	nts considered in committee (including those not adopted):
	amendment # amendment #
<u> </u>	amendment # amendment #
X Execu	tive Session Sheet
K Comm	nittee Report
Floor Action	Documents: {Clerk's Office}
All floor amen	adments considered by the body during session (only if they are offered to the senate):
	amendment # amendment #
	amendment # amendment #
Post Floor A	ction: (if applicable) {Clerk's Office}
	nittee of Conference Report (if signed off by all members. Include any new language proposed committee of conference):
Enroll	led Bill Amendment(s)
Gover	nor's Veto Message
All available	versions of the bill: {Clerk's Office}
	as amended by the senate as amended by the house
	final version
Completed (Committee Report File Delivered to the Senate Clerk's Office By:
Lenge Committee	1 Horac B/12/21 Date
Sanata Clarl	25 055 6 11