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Chair Luke Clippinger, Vice-Chair Vanessa Atterbeary, & Members of the Committee  
House Judiciary Committee  
Room 101  
House Office Building  
Annapolis, MD 21401

## House Bill 11 - Judges - Election, Retention, and Mandatory Retirement Age

### POSITION: OPPOSE

Chair Clippinger, Vice-Chair Atterbeary, and Members of the Committee:

The Administration respectfully opposes House Bill 11 - Judges - Election, Retention, and Mandatory Retirement Age. This opposition is solely based on objections to the proposed increase in mandatory retirement age; the Administration takes no position on the proposed changes to judicial elections.

#### 1. An older Judiciary is not a better Judiciary.

Maryland is well-served by a dynamic Judiciary that employs judges with sharp legal minds and who reflect the racial and gender diversity of the state. That vitality is sustained by the mandatory judicial retirement age. The perpetual infusion of younger, talented judges help refresh the bench with new perspectives and recent practical experience. There are many attorneys standing ready and interested in distinguishing themselves in the State's judiciary; there is no shortage of qualified candidates requiring continued service of septuagenarians. House Bill 11 would institutionalize an older judiciary in Maryland.

#### 2. Maintaining the current mandatory retirement age helps ensure diversity of the bench

Replenishing the Judiciary this way also helps ensure diversity of the bench, as each year increased numbers of women and minorities are appointed. House Bill 11 would effectively create a three-year moratorium on retirements. Of the judges who would benefit from those additional years of service, 70 percent are white men. In contrast, a majority of the judicial appointments made by Governor Hogan have been women or minorities. Increasing the retirement age would delay and stymie the enormous progress the State has made in shaping the Judiciary to represent the makeup, backgrounds, and views of the people it serves.

#### 3. The current system optimally combines experienced recall judges and talented younger judges.

There is no doubt that many judges older than 70 can be effective and have accumulated valuable knowledge and experience. But that is not wasted by the current mandatory retirement age. By permitting recall of retired

judges, the current system preserves their ability to serve. The Chief Judge can recognize when judges above age 70 maintain their mental soundness and can specially assign them accordingly to any court, in any county, at the level of their appointment or below. The current system therefore offers the best of both worlds — it retains these accumulated skills, while acquiring and cultivating the energy and contemporary knowledge of the next generation of judges.

4. Fewer recall judges will make it more difficult to adapt to changing needs of the courts.

Increasing the mandatory retirement age also poses a threat to judicial efficiency. By keeping judges in regular service for an additional three years, there will be a permanent decrease in the number of judges available for recall deployment when extra judicial resources are needed. This will result in less flexibility in the system to help the courts manage periods of overcrowded dockets.

5. Attempts to constitutionalize older judges has proven contrary to the public will.

This is all why, time and time again, Americans have shown deep skepticism about efforts to extend judicial retirement ages, allowing judges to age in place on the bench and creating overall more elderly judiciaries. Hawaii and Louisiana citizens in 2014 rejected ballot measures to raise the mandatory judicial retirement age past 70, as did New Year citizens the year before in 2013, as did Ohio citizens two years before that in 2011.

These electoral results demonstrate that Americans like their judicial systems to be dynamic, diverse, and understanding of the modern societies they serve. Increasing the mandatory retirement age detracts from that ideal.

For these reasons, the Administration respectfully requests an unfavorable report on House Bill 11.

Sincerely,

Keiffer J. Mitchell, Jr.  
Chief Legislative Officer

Cara Sullivan  
Deputy Legislative Officer