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How States Set Judicial Salaries

THE QUESTION OF JUDICIAL COMPENSATION — NOT JUST HOW MUCH, BUT THE MECHANISM USED TO SET THE AMOUNT

— has been a part of the American discourse on judicial independence since before the Revolution. In the Declaration of Independence, the colonists listed among their grievances that King George III had “made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.”

Since then, states have devised, revised, and rejected many different compensation schemes to strike the delicate balance of ensuring that judges receive fair compensation and maintain their independence from the other branches of government. Data collected by the National Center for State Courts revealed that while state legislatures maintain overall control over judicial salaries (with the notable exception of Arkansas), the mechanisms used to set those salaries vary widely.

Commission vs. noncommission

Twenty-four states and the U.S. Virgin Islands rely on judicial compensation commissions, which are independent bodies

that devise a salary schedule for judges and sometimes other court personnel. Very little has changed in the last six years in the states that use these commissions,¹ except North Carolina, which abolished its State Judicial Council commission in 2022.²

There are four main types of compensation commissions in state courts:

- 1) *Advisory*. Fourteen states utilize this process, whereby a commission submits a recommendation to the state legislature for final consideration and approval.
- 2) *Binding unless overridden by the legislature*. The threshold to override the commission's recommended compensation is as low as a simple majority in some states or as high as two-thirds in others. For example, unless rejected by a joint resolution or altered by an act of the legislature, the recommendation of Alabama's Judicial Compensation Commission becomes law upon adjournment of that session of the legislature.³
- 3) *Binding unless overridden by voters*. Only the Washington state Citizens' Commission on Salaries for Elected Officials utilizes this model.⁴

4) *Binding, cannot be overridden.* Only the Arkansas Independent Citizens Commission follows this model,⁵ although there have been legislative efforts to try and return the power back to the Arkansas General Assembly.⁶

The remaining 31 states and territories either do not have a commission (28) or their commissions do not cover judicial salaries (California, Idaho, and Alaska).

Cost-of-living adjustments

While legislatures and commissions set base salary amounts, several states also include provisions that provide for automatic cost-of-living adjustments. Maine's legislature, for example, set a statutory amount for judicial salaries in fiscal year 1998-99 but also provided for automatic cost-of-living adjustments up to 3 percent per year based on the Consumer Price Index (CPI).⁷ However, because these automatic adjustments are set by statute, some legislatures have opted to repeal or suspend them, with mixed results. For example, Illinois' Compensation Review Board was mandated by statute to compute the cost-of-living adjustments for judicial salaries and increase them accordingly. When the legislature attempted to suspend such cost-of-living increases, the act was held unconstitutional.⁸ In 2023, Texas also considered legislation that would tie judicial salaries to the CPI.⁹

Tying state court salaries to those of federal judges

While at the time of writing, no state *statutorily* ties state judicial salaries to those of federal judges, such efforts

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are not uncommon. From 2005 to 2007, Pennsylvania adopted a system where state judicial salaries were set as a percentage of federal judges' salaries or tied to a cost-of-living increase based on the CPI (whichever was greater).¹⁰ That system lasted only two years before the references to federal judicial salaries were removed; the CPI language remained.¹¹ Still, compensation commissions have tied state judicial salaries directly to those of federal judges in several states, notably Missouri¹² and New York.¹³ However, in the case of New York, that direct tie lasted only from 2016 through 2019; the compensation commission recommended in 2020 against continuing to directly link state and federal judicial salaries due to concerns over the economic effects of the COVID-19 pandemic.¹⁴ In March 2023, the New Mexico Legislature adopted SB 23, which would tie state judicial salaries to the salaries of federal mag-

istrate judges serving in New Mexico. That bill was vetoed in April 2023.¹⁵ A similar plan that would directly tie state judicial salaries to that of federal judges was enacted in Kansas in 2023. Starting in 2025, a Kansas district court judge's salary will be 75 percent of the annual salary of a U.S. district judge, while the state's chief justice will have a salary equal to 125 percent.¹⁶

Longevity increases

Several states provide judges with longevity increases, providing that a judge who serves for longer periods receives additional compensation. The result is that judges who are new to the bench can make substantially less than their counterparts. The most recent state to adopt such a practice was Texas, in 2019. Judges in that state receive 100 percent of their base salaries after four years of service and 120 percent after eight years.¹⁷ Similar programs exist in Connecticut and Nevada.¹⁸ Alabama repealed its "bench experience" system in 2004,¹⁹ but has since reinstated it — first for circuit and district judges,²⁰ and in 2021 for all judges.²¹

Local or other supplements

While relatively commonplace in earlier parts of American history, local supplements for judges in higher-level courts are less common today. Georgia maintains such a system, with total local supplementation capped at \$50,000.²² Texas has a similar system whereby counties can supplement court of appeals salaries up to \$9,000 and district court judges up to \$18,000.²³ Other states have eliminated or are phasing out such systems.²⁴

Louisiana's supplemental system is at the state rather than the county level.²⁵ The Judges' Supplemental Compensation Fund is funded by court fees,²⁶ which are then disbursed monthly to judges throughout the state. Because the fund relied on court fees, judges in Louisiana faced pay cuts during the height of the COVID-19 pandemic.²⁷

This and additional information on commission language and how states set judicial salaries can be found at the National Center for State Courts' Judicial Salary Tracker located at www.ncsc.org/salarytracker/special-reports/how-states-set-salaries/map. The Judicial Salary Tracker has been recently updated to include information showing 10-year trends

in judicial salaries for each state as well as to provide additional comparison tools for appellate courts and general jurisdiction trial courts.

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¹ William Raftery, *Salary by Committee*, 101 JUDICATURE 3, 3–4 (2017).

² See N.C. GEN. STAT. ANN. § 7A-409.1 *repealed* by S.L. 2022-47, § 21(a), eff. July 7, 2022; and S.L. 2022-74, § 16.3(a), eff. July 11, 2022.

³ ALA. CODE § 12-10-5 (2023).

⁴ WASH. CONST. art. 28 §2 (2019) (“Any change of salary shall be filed with the secretary of state and shall become law ninety days thereafter without action of the legislature or governor but shall be subject to referendum petition by the people, filed within the ninety-day period.”).

⁵ See ARK. CONST. art. 19, § 31(a) (2020) (“As provided in this section, members of the General Assembly shall have no authority to set salaries for . . . Justices. . . Judges. . . .”); see also ARK. CONST. art. 19, § 31(d) (2020) (“The independent citizens commission shall have the duty to review and adjust as it deems necessary the salaries for the following positions... (9) Chief Justice of the Supreme Court; (10) Justice of the Supreme Court; (11) Chief Judge of the Court of Appeals; (12) Judge of the Court of Appeals; (13) Circuit court judge; (14) District court judge”); ARK. CONST. art. 19 § 31(e) (2020) (“The salaries of the positions under subsection (d) of this section (A) shall not be subject to appropriation by the General Assembly; and (B) shall be paid from the Constitutional Officers Fund or its successor fund or fund accounts in the amount determined by the independent citizens commission.”).

⁶ H.J. Res. 1001, 94th Gen. Assemb., Reg. Sess. (Ark. 2023) (“A Constitutional Amendment Concerning The Salaries Of Elected Constitutional Officers Of The Executive Department, Members Of The General Assembly, Supreme Court Justices, Court Of Appeals Judges, And Prosecuting Attorneys.”).

⁷ 4 ME. REV. STAT. ANN. tit. 4 § 4 (2023).

⁸ *Jorgensen v. Blagojevich* 811 N.E.2d 652, 669–670 (Ill. 2004) (“This court did not set the salaries judges receive, nor did we make COLAs a component of those salaries. The salaries, including their COLA component, were provided by law in the manner described earlier in this opinion. Now that those salaries have been implemented, the constitution commands that they be paid. No principle of law permits us to suspend constitutional requirements for economic reasons, no matter how compelling those reasons may seem.”).

⁹ See H.B. 437, 88th Leg., Reg. Sess. (Tex. 2023); H.B. 438, 88th Leg., Reg. Sess. (Tex. 2023).

¹⁰ See 2005 Pa. Legis. Serv. Act 2005-44 (H.B.

1521) (amended 2007) (“Except as set forth in subsection (b), a justice of the Supreme Court shall receive as an annual salary the base salary of a circuit judge of the United States Court of Appeals plus all adjustments under section 1810 (relating to cost of living).”).

¹¹ See 2007 Pa. Legis. Serv. Act 2007-30 (H.B. 10); PA. STAT. AND CONS. STAT. ANN. § 1741 (West 2023).

¹² See STATE OF MO. OFF. OF ADMIN., REPORT OF THE MISSOURI CITIZENS’ COMMISSION ON COMPENSATION FOR ELECTED OFFICIALS (2010), [https://perma.cc/XSM9-7QMV]; (“[E]ach state judge’s salary shall be indexed to the commensurate judicial position in the federal system”); see also *McGraw v. State*, 489 S.W.3d 770 (Mo. 2016) (en banc).

¹³ See N.Y. STATE COMM’N ON LEGISLATIVE, JUDICIAL, AND EXEC. COMP., FINAL REPORT ON JUDICIAL COMPENSATION (2015) [https://perma.cc/RK63-W2LT] (“Effective April 1, 2016, the salary of a New York State Supreme Court Justice shall be fixed at 95% of the salary of a Federal District Court Judge in effect at that time.. Effective April 1, 2018, the salary of a Supreme Court Justice shall be fixed at 100% of the salary of a Federal District Court Judge in effect at that time.”).

¹⁴ See N.Y. STATE COMM’N ON LEGISLATIVE, JUDICIAL, AND EXEC. COMP., FINAL REPORT ON JUDICIAL COMPENSATION (2020) [https://perma.cc/Q77Z-Q8CP] (“Given the state’s extremely precarious fiscal condition the Commission is constrained from recommending salary increases for the next four years for judges, legislators, and executive branch officials.”).

¹⁵ S.B. 2, 56th Leg., First Sess. (N.M. 2023) (*vetoed* in 2023), [https://perma.cc/Y3PM-7MWQ].

¹⁶ S.B. 229, Leg. 2023, Ch. 69, new § 3 (Kan. 2023) [https://perma.cc/KV3T-AP79].

¹⁷ H.B. 2384 § 17, 86th Leg., Reg. Sess. (Tex. 2019).

¹⁸ See CONN. GEN. STAT. ANN. §751-47 (2022); NEV. REV. STAT. ANN. §73.03 (2011).

¹⁹ See H.B. 308, Ala. Leg., Reg. Sess. (Ala. 2004) (“Notwithstanding the provisions of Section 12-10A-1(d), Code of Alabama 1975, no circuit judge, district judge, Supreme Court Justice, or judge of the appellate courts shall have his or her salary increased for bench experience after the effective date of this act”).

²⁰ See ALA. CODE § 12-10A-1(f) (2019) (“Effective April 23, 2006, notwithstanding subsection (e), the provisions of subsection (d), which provide for additional compensation based on bench experience are reinstated, as they apply to circuit and district judges only.”)

²¹ S.B. 292 § 1, Ala. Leg., Reg. Sess. (Ala. 2021).

²² See GA. CODE ANN. § 15-6-29.1(c) (2021) (“Notwithstanding subsection (c) of Code Section 15-6-29, on and after January 1, 2016, no county or counties comprising the circuit shall increase an aggregate county salary supplement paid to a superior court judge, if such supplement is \$50,000.00 or more.”).

²³ T.X. JUDICIAL COMP. COMM’N, REPORT OF THE JUDICIAL COMPENSATION COMMISSION 9 (2022) [https://perma.cc/6XU2-M7CY].

²⁴ See, e.g., CAL. GOV’T § 68220(a) (“Judges of a court whose judges received supplemental judicial benefits provided by the county or court, or both, as of July 1, 2008, shall continue to receive supplemental benefits from the county or court then paying the benefits on the same terms and conditions as were in effect on that date.”); *Sturgeon v. County of Los Angeles*, 242 Cal. App. 4th 1437, 1449 (2015) (“So while it may not be a perfect solution to Sturgeon I, subdivision (a) is plainly written and provides for a status quo that may go on indefinitely without offending the California Constitution. If the Legislature wants to climb up on the roof and give it a more permanent fix in the future, it is free to do so, but this one is still holding.”).

²⁵ LA. STAT. ANN. § 13:48–50 (2019).

²⁶ LA. STAT. ANN. § 13:10.3 (2023).

²⁷ See, e.g., Rachel Mirpo, *Louisiana Judges Get Pay Cut After Courts Collect Fewer Fines and Fees*, LOUISIANA ILLUMINATOR, (Nov. 29, 2021, 6:59 pm) [https://perma.cc/3YQK-YZF9]; Zach Parker-zach, *District Court Resumes Limited Operations; Judges’ Pay at Stake*, HANNA NEWSPAPERS (May 20, 2020) [https://perma.cc/WMV3-A2YS].