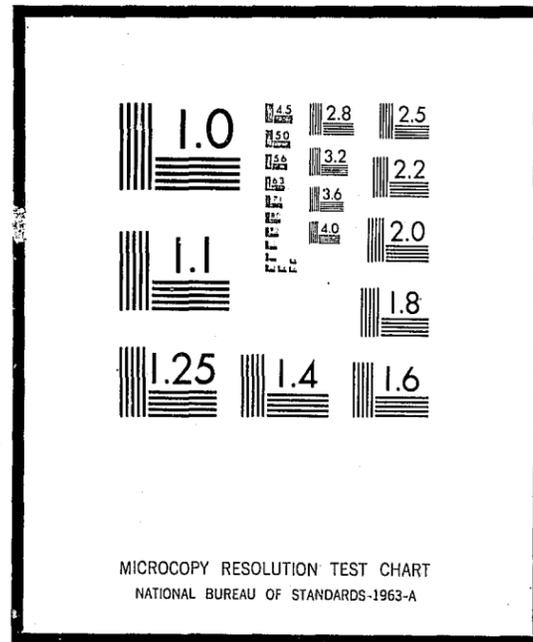


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Report No. 18

THE EXTENT OF ADOPTION
OF THE MERIT PLAN OF
JUDICIAL SELECTION AND TENURE

May, 1970

THE EXTENT OF ADOPTION OF THE
MERIT PLAN OF JUDICIAL SELECTION AND TENURE

Non-partisan judicial selection through an appointive-elective system is based on a pattern first advanced by the American Judicature Society in 1913. The plan embodies three basic elements:

- (1) Nomination of slates of judicial candidates by non-partisan lay-professional nominating commissions;
- (2) Appointment of judges by the governor or other appointing authority from the panel submitted by the nominating commission; and
- (3) Review of appointments by voters in succeeding elections in which judges who have been appointed run unopposed on the sole question of whether their records merit retention in office. *

The extent to which these basic elements are operative in the United States is summarized in this report. It notes the states in which these basic elements are employed in selecting judges; which of the basic elements are used; to which courts (highest court, intermediate court, general trial court, or courts of limited and special jurisdiction) the judicial selection provisions apply; and the constitutional, statutory or other authorization for their use. Following it is a list of citations to the applicable constitutional and statutory provisions and the names of the courts which they apply.

* Also a part of the tenure picture is the provision for discipline and removal of judges, covered in A. J. S. Report No. 5, and for voluntary and involuntary retirement for age or illness, for which see 1968 Survey of Judicial Salaries and Retirement Plans in the United States (plus supplements).

A SUMMARY CHART

State	Year	Features of Merit Plan			Courts Involved			Authority			
		Selection		Tenure	Appel- late	Gen. Trial	Lim. & Special Jur.	Const.	Stat.	Charter	Exec. Action
		Nom.	Appt.	Non-Comp. Election							
California	1934			x	x			x			
California	1967	x	x		x	x					x ¹
Missouri	1940	x	x	x	x	x ²	x ³	x			
Missouri	1966	x	x	x			x ⁴			x	
Maryland	1940			x			x ⁵				
Alabama	1950	x	x			x ⁶		x			
Louisiana	1952	x	x				x ⁷		x		
Georgia	1956	x	x	x			x ⁸		x		
Georgia	1965	x	x	x			x ⁹		x		
Alaska	1958	x	x	x	x	x		x			
Alaska	1968	x	x				x		x		
Kansas	1958	x	x	x	x			x			
Iowa	1962	x	x	x	x	x		x			
Nebraska	1962	x	x	x	x	x		x			
Nebraska	1963	x	x	x			x ¹⁰		x		
Nebraska	1965	x	x	x			x ¹¹		x		
Nebraska	1967	x	x	x			x ¹²		x		
Illinois	1962			x	x	x		x			
New York	1962	x	x				x ¹³				x
Florida	1963	x	x	x			x ¹⁴				
Colorado	1964	x	x	x			x ¹⁵			x	
Colorado	1966	x	x	x	x	x	x	x			
New Mexico	1965	x	x		x	x					x ¹⁶
Puerto Rico	1965	x	x			x	x				x
Oklahoma	1967	x	x	x	x			x			
Oklahoma	1967	x	x			x	x		x		
Vermont	1967	x	x	x ¹⁷	x	x	x		x		
Idaho	1968	x	x		x	x		x ¹⁸	x ¹⁸		
Utah	1965	x	x				x		x		
Utah	1968	x	x		x	x		x ¹⁸	x ¹⁸		
Penn.	1968			x	x	x		x			

Footnotes to Summary Chart

1. Judicial vacancies are filled by appointment by the governor from nominations submitted by Judicial Selection Advisory Boards.
2. Circuit Courts of St. Louis City and Jackson County.
3. St. Louis Court of Criminal Correction and Probate Courts of St. Louis and Jackson County.
4. Municipal Court of Kansas City.
5. People's Court of Baltimore City.
6. Circuit Court of Jefferson County.
7. Traffic Court of New Orleans.
8. Municipal Court of Atlanta.
9. Traffic Court of Atlanta.
10. Juvenile Courts.
11. Municipal Courts of Omaha and Lincoln.
12. Workmen's Compensation Court.
13. Criminal Court of New York City, Family Court, and for interim vacancies on the Civil Court of New York City.
14. Metropolitan Court of Dade County (Miami), under Dade County Charter Amendment.
15. Denver County Court, by amendment of the Charter of the County of Denver.
16. Judicial vacancies are filled by appointment by the governor from nominations submitted by the Committee on Judiciary of the State Bar of New Mexico.
17. Vote is by General Assembly, not electorate.
18. Constitution gives legislature power to determine method of selection.

CITATIONS

Merit Selection and Tenure

- ALABAMA -- Circuit Court of Jefferson County (Birmingham), Alabama. Ala. Const. amend. 83 (1950), 110 (1955).
- ALASKA -- Supreme Court, Superior Court and District Court. Alas. Const. art. IV, §§5-9; Alas. Stat. §§22.05.080, 22.05.100, 22.10.100, 22.10.120, 22.15.170 (1967); §22.15.170 (amend., Supp. 1968); §§15.35.030, 15.35.060 (1962); 15.35.100 (Supp. 1968).
- CALIFORNIA -- Supreme and District Courts of Appeal. Cal. Const. art. VI, §16 (1966); Cal. Election Code Ann. §§25300, 25301 (1961); §§25302, 25302.5, 25305 (Supp. 1968); Cal. Govt. Code Ann. §§71141, 71143, 71145, 71145.1, 71180, 71602 (Supp. 1967). Judicial vacancies are filled by appointment by the governor from nominations submitted by Judicial Selection Advisory Boards. Reagan, "Judicial Selection in California," 42 Los Angeles Bar Bull. 555 (1967).
- COLORADO -- County Court of Denver, City and County of Denver. Home Rule Charter, §§ A 13.8 to A 13.8-3. All courts. Colo. Const. art. VI, §§ 20, 24, 25, 26 as amended November 1966.
- FLORIDA -- Metropolitan Court of Dade County (Miami). Home Rule Charter, §§ 6.03, 6.04, 6.06 (1963).
- GEORGIA -- Municipal Court of Atlanta. Atlanta Charter § 5.1.7 (1956). Traffic Court of Atlanta. Atlanta Charter § 5.2.3.1 (1965).
- IDAHO -- Supreme and District Courts, Idaho Code Ann. § 1-2101 (1947); §§ 1-2102, 1-2103 (Supp. 1967).
- ILLINOIS -- Non-competitive re-election of justices and judges of the Supreme, Appellate, and Circuit Courts, Ill. Const. art. VI, §§ 10, 11 (1962).
- IOWA -- Supreme and District Courts. Iowa Const. art. V, §§ 15-18 (1962); Iowa Code Ann. ch. 46 (1963).
- KANSAS -- Supreme Court. Kan. Const. art. III, § 2; Kan. Stat. Ann. §§ 20-119 to 20-138 (Supp. 1959).
- LOUISIANA -- Traffic Court of New Orleans. La. Const. art. 7, § 94-II (as amended 1964).
- MARYLAND -- People's Court of Baltimore City. Md. Const. art. IV § 41A (1940).
- MISSOURI -- Supreme Court, Courts of Appeal, Circuit Courts of St. Louis City and Jackson County, Probate Courts of St. Louis City and Jackson County, St. Louis Court of Criminal Correction. (May be extended by local option to all courts of record, if necessary enabling legislation is enacted by the Missouri legislature.) Mo. Const. art. V, § 29 (1940); Mo. Supreme Court Rules 10.20 to 10.28. Municipal Court of Kansas City. §§ 395.1-9, 396, Kansas City Charter, amended 1966; revised Ordinances of Kansas City, Missouri, art. IV, §§ 35.600 to 35.890 (1966).
- NEBRASKA -- Supreme and District Courts. Neb. Const. art. V, § 21 (1962); §§ 24-801 to 24-812 (1963). Juvenile Courts. Neb. Stat. Rev. §§ 43-230.01 to 43-230.05 (1963). Workmen's Compensation Court. Neb. Stat. Rev. §§ 48-152 to 48-153 (1967). Municipal Courts of Omaha and Lincoln. Neb. Stat. Rev. § 26-102 (1967).

- NEW YORK -- By executive action of former Mayor Robert H. Wagner and present Mayor John V. Lindsay, a nominating commission is used for the judges of the Criminal Court of New York City, Family Court, and for interim vacancies on the Civil Court of New York City (to which permanent judges are elected). See 49 JAJS 197 (1966).
- OKLAHOMA -- Supreme Court and Court of Criminal Appeals. Okla. Const. art. VII-B (1967). The governor is authorized by Title 51, §10 to utilize the services of the judicial nominating commission when filling vacancies in the District and Intermediate Appellate Courts.
- PENNSYLVANIA -- Non-competitive re-election of major trial and appellate court judges. Pa. Const. art. V, §§ 13-15 (1968).
- PUERTO RICO -- The Advisory Commission for Judicial Nominations was established by Governor Roberto Sanchez Vilella in December, 1965, and has been continued by his successor, Governor Luis A. Ferre. It operates under rules adopted on January 28, 1966, copies of which may be obtained from the Office of Court Administration. See 49 JAJS 198 (1966).
- UTAH -- Supreme and District Courts. When a judge's term has expired he faces a non-partisan election, which is non-competitive if no one runs against him. However, someone may challenge the judge, and the challenger may be elected without having been nominated or appointed. Utah Code Ann. §§ 20-1-7.1 to 20-1-7.9 (1967). Juvenile Court judges are appointed by the governor from a list of two candidates submitted by the local juvenile court commission, and may be re-nominated and reappointed at the end of their six-year terms. Utah Code Ann. § 55-10-70 (1965).
- VERMONT -- Supreme, Superior, and District Courts. Election of these judges is by the General Assembly rather than by the electorate. Vt. Stat. Ann. Tit. 4, §§ 3 and 571-574 (1968).

END