



Judicial Selection Landscape

Texas Commission on Judicial Selection

January 9, 2020

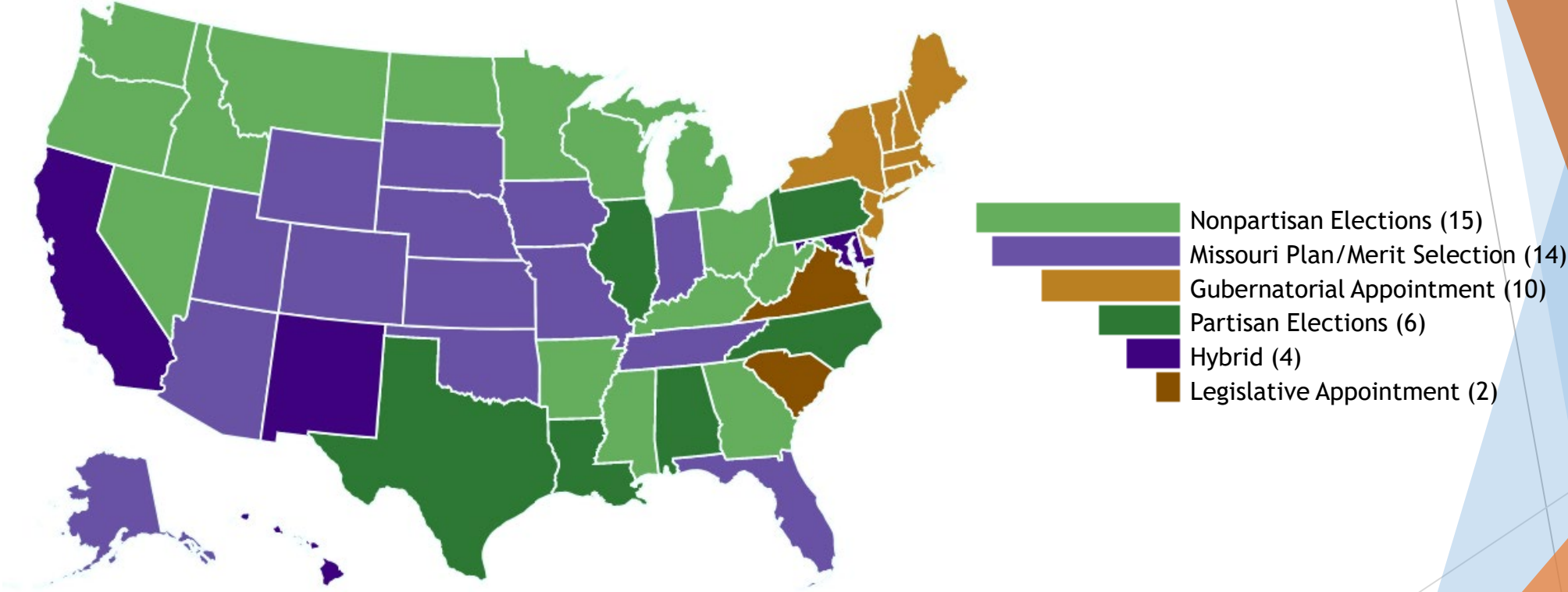
Different Selection Methods

- ▶ **Nonpartisan Elections:** Judges selected in nonpartisan elections.
- ▶ **Partisan Elections:** Judges selected in partisan elections.
- ▶ **Gubernatorial Appointment:** Judicial candidates are selected by the governor for appointment.
- ▶ **Legislative Appointment:** Judges are selected by a vote of the state Legislature.
- ▶ **Missouri Plan/Merit Selection:** Combines certain elements of appointment- and election-based selection methods. Under the Missouri Plan, first adopted by its namesake state, judicial vacancies are filled by the governor, who appoints a judge from a slate of candidates selected by a nominating commission. Sitting judges approaching the end of their terms may seek additional terms through standing in an unopposed yes/no retention election.
- ▶ **Hybrid Selection:** Some states use a version of the Missouri Plan without a binding nominating commission and Hawaii uses a judicial selection commission instead of retention elections to decide whether sitting judges are retained for additional terms.

Judicial Nominating Commissions

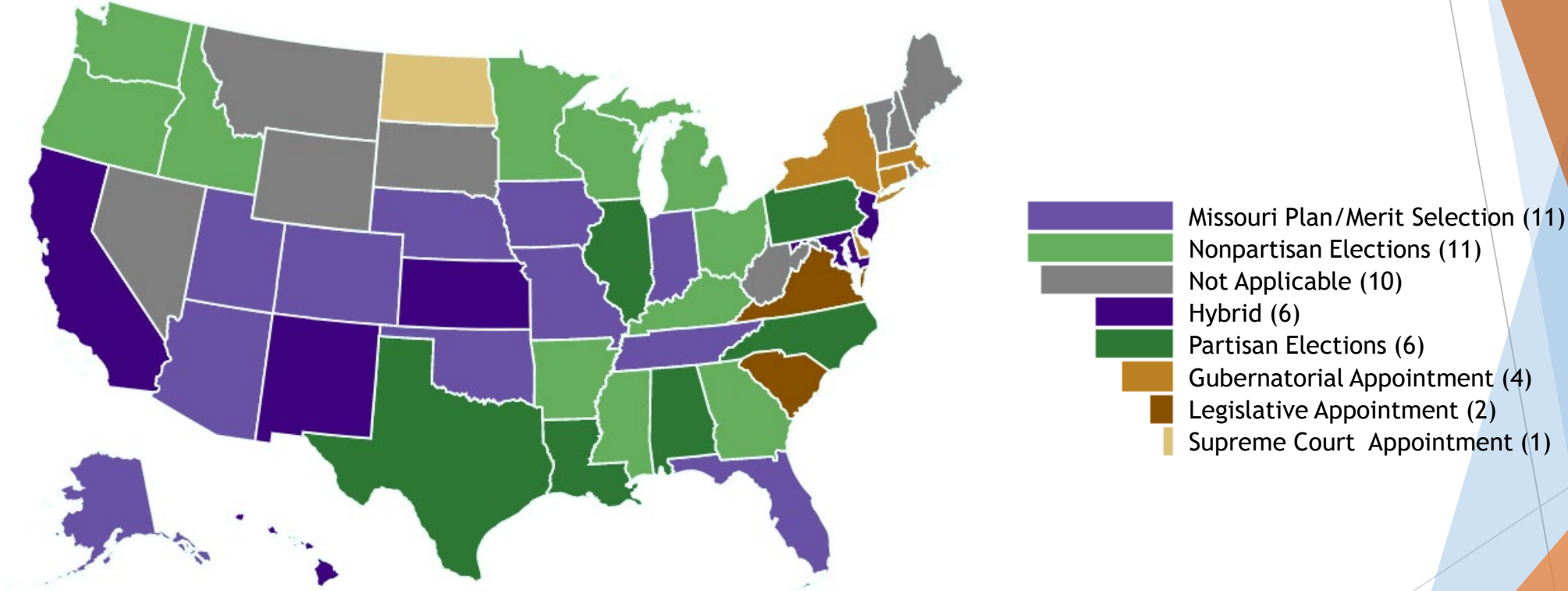
- ▶ Independent bodies assembled to help with the judicial appointment process by vetting candidates for judicial vacancies and sending a list of qualified candidates to the appointing authority, typically the governor.
- ▶ Commission membership varies by state, but usually the governor appoints at least some members, and in some states the legislature and state bar also play a part in appointing commissioners.
- ▶ Nominating commissions are widely used and, in most states, the appointing authority, typically the governor, must choose from the list provided by the commission.
 - ▶ In 36 states and D.C., nominating commissions are used to help fill vacancies that open up on the high court.
 - ▶ The overwhelming majority of those state commissions – 29 of them and D.C. – issue binding recommendations.
 - ▶ In the 7 states where nominating commissions are nonbinding, the appointing authority receives a list of vetted candidates from the commission but is not required to appoint from it.

Supreme Court Selection



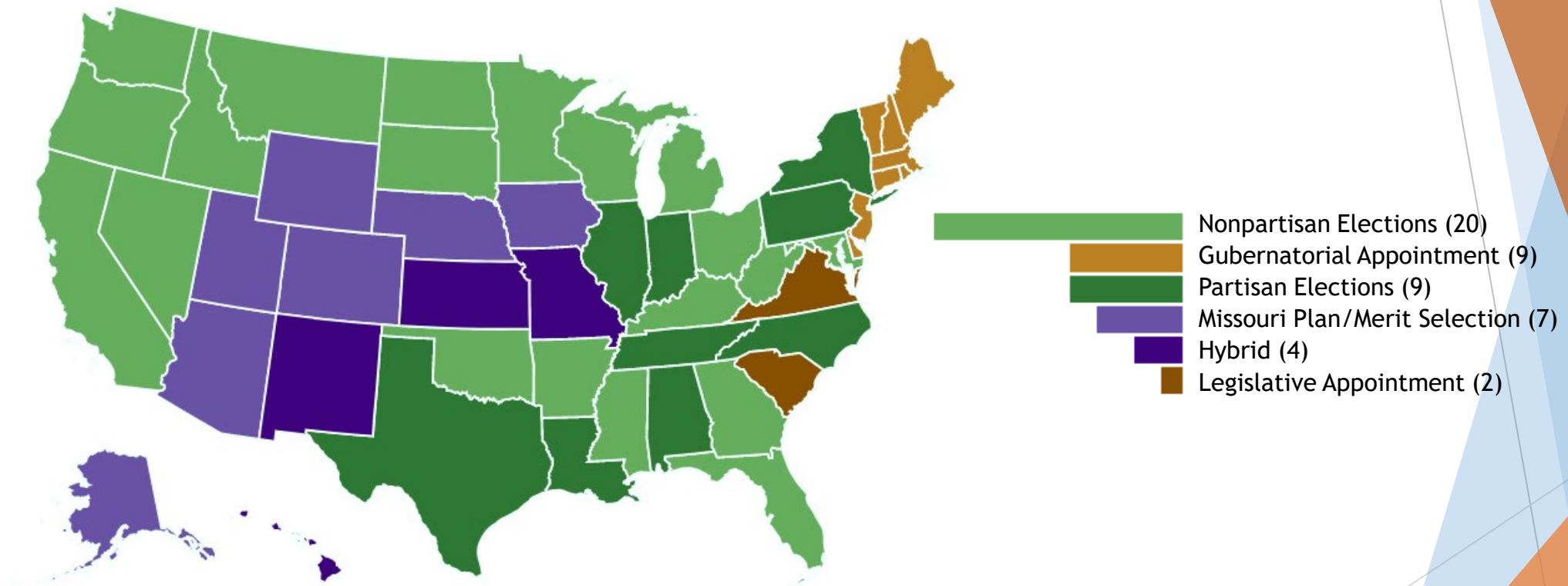
Source: <http://judicialselectionmap.brennancenter.org/?court=Supreme>

Intermediate Appellate Court Selection



Source: <http://judicialselectionmap.brennancenter.org/?court=Appellate>

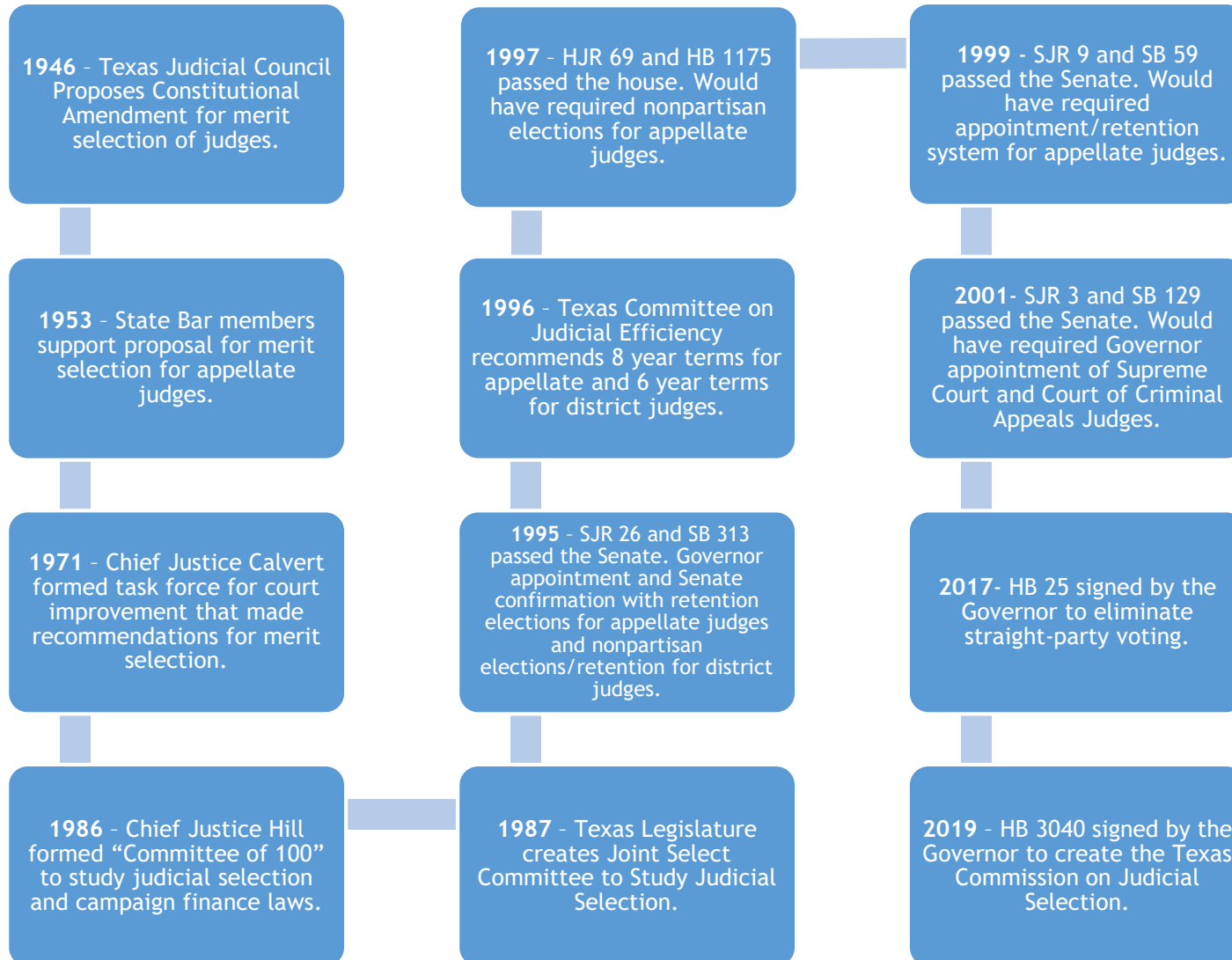
Trial Court Selection



Recent State Changes to Judicial Selection

- ▶ **2001** - Arkansas eliminated partisan elections for judicial candidates.
- ▶ **2007** - Rhode Island allowed the Governor to select candidates that were listed as finalists by the judicial nomination committee within the last five years.
- ▶ **2011** - Montana tried to switch their nonpartisan elections to partisan.
- ▶ **2012** - Georgia attempted to convert nonpartisan elections to partisan, unless local constituencies voted to remain nonpartisan.
- ▶ **2013** - Minnesota attempted to switch to merit selection.
- ▶ **2015** - Pennsylvania passed in committee an attempt to change to merit selection.
- ▶ **2015** - North Carolina's nonpartisan elections for the Court of Appeals became partisan.
- ▶ **2016** - West Virginia's partisan elections became nonpartisan.

Judicial Selection Reform in Texas

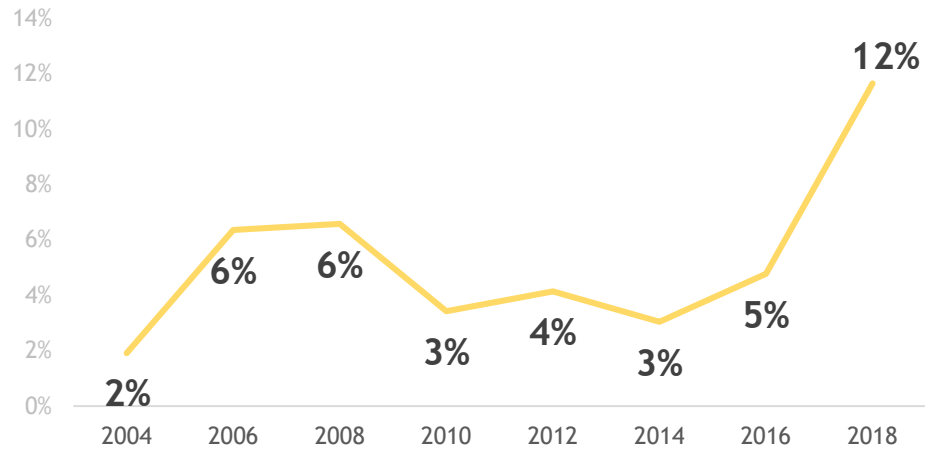




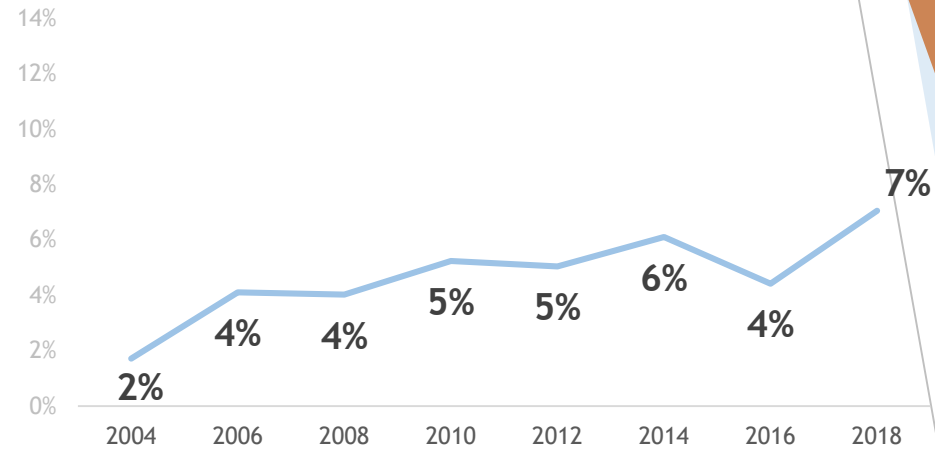
Data on Turnover and Selection of Texas Judges

Turnover in Appellate and District Judges by Biennium

Percentage of Appellate and District Judges Defeated for Reelection



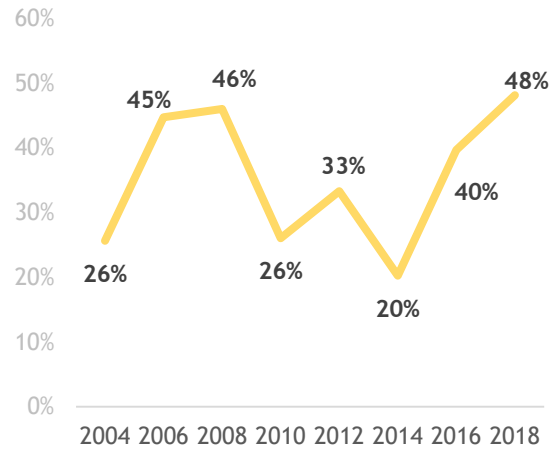
Percentage of Appellate and District Judges Not Running for Reelection



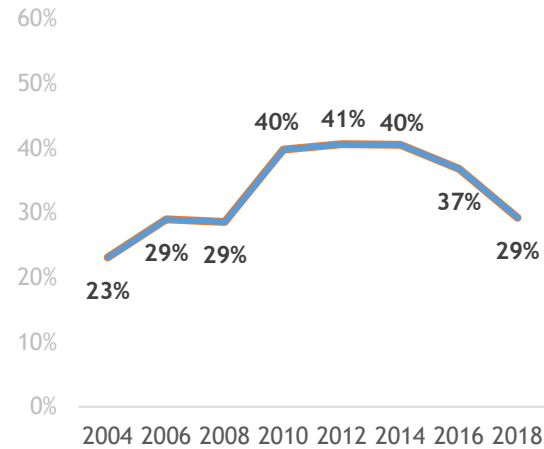
Election Year in the Biennium	2004	2006	2008	2010	2012	2014	2016	2018
Number of judges	523	535	547	554	555	557	565	567
Defeated for reelection	10	34	35	18	23	17	27	66
% defeated	2%	6%	6%	3%	4%	3%	5%	12%
Did not run for reelection	9	22	22	29	28	34	25	40
% did not run for reelection	2%	4%	4%	5%	5%	6%	4%	7%

Appellate and District Judges Leaving the State Judiciary

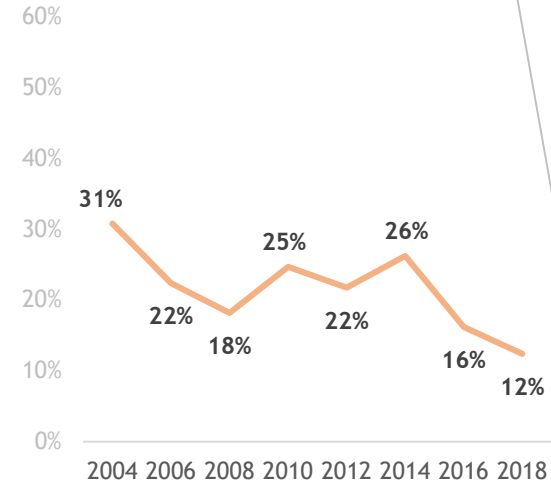
Percentage Defeated for Reelection



Percentage Not Running for Reelection



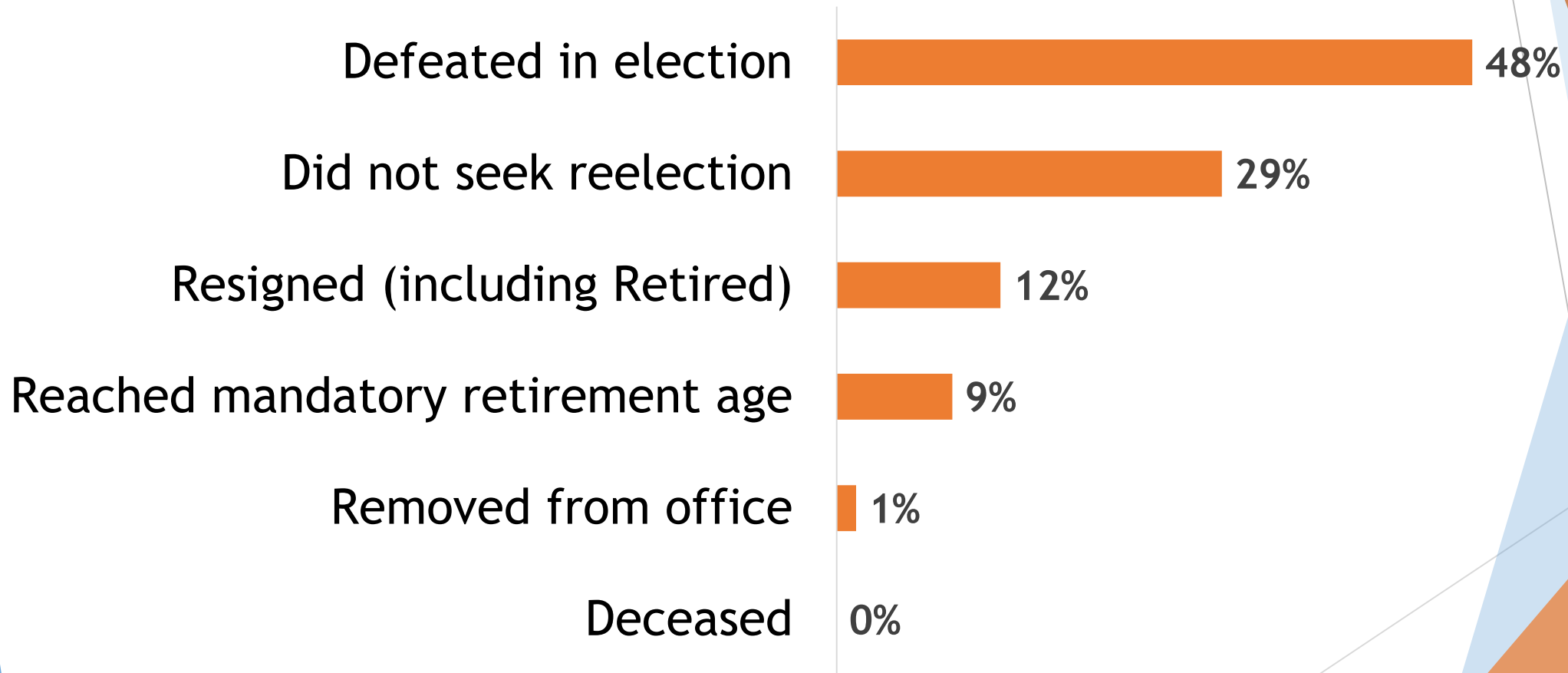
Percentage Resigning



Election Year in the Biennium	2004	2006	2008	2010	2012	2014	2016	2018
Total Leaving State Judiciary	39	76	76	73	69	84	68	137
Defeated in election	26%	45%	46%	26%	33%	20%	40%	48%
Did not seek reelection	23%	29%	29%	40%	41%	40%	37%	29%
Resigned (including retired)	31%	22%	18%	25%	22%	26%	16%	12%
Mandatory retirement	8%	3%	4%	1%	1%	5%	3%	9%
Removed from office or resigned under allegations of misconduct	3%	0%	1%	1%	1%	5%	3%	1%
Deceased	10%	1%	1%	7%	1%	4%	1%	0%

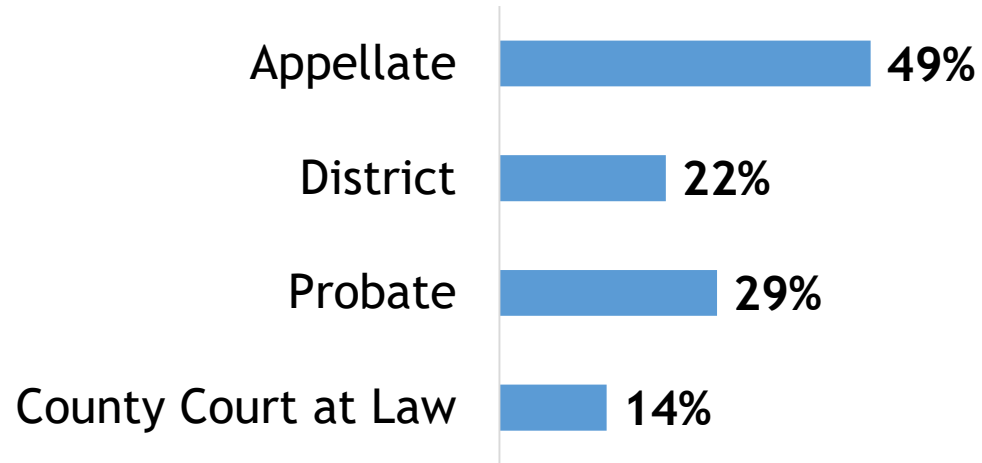
Turnover in Appellate and District Judges

137 judges left office from September 2017 to August 2019, almost half of whom were defeated in the last election.



2018 Election

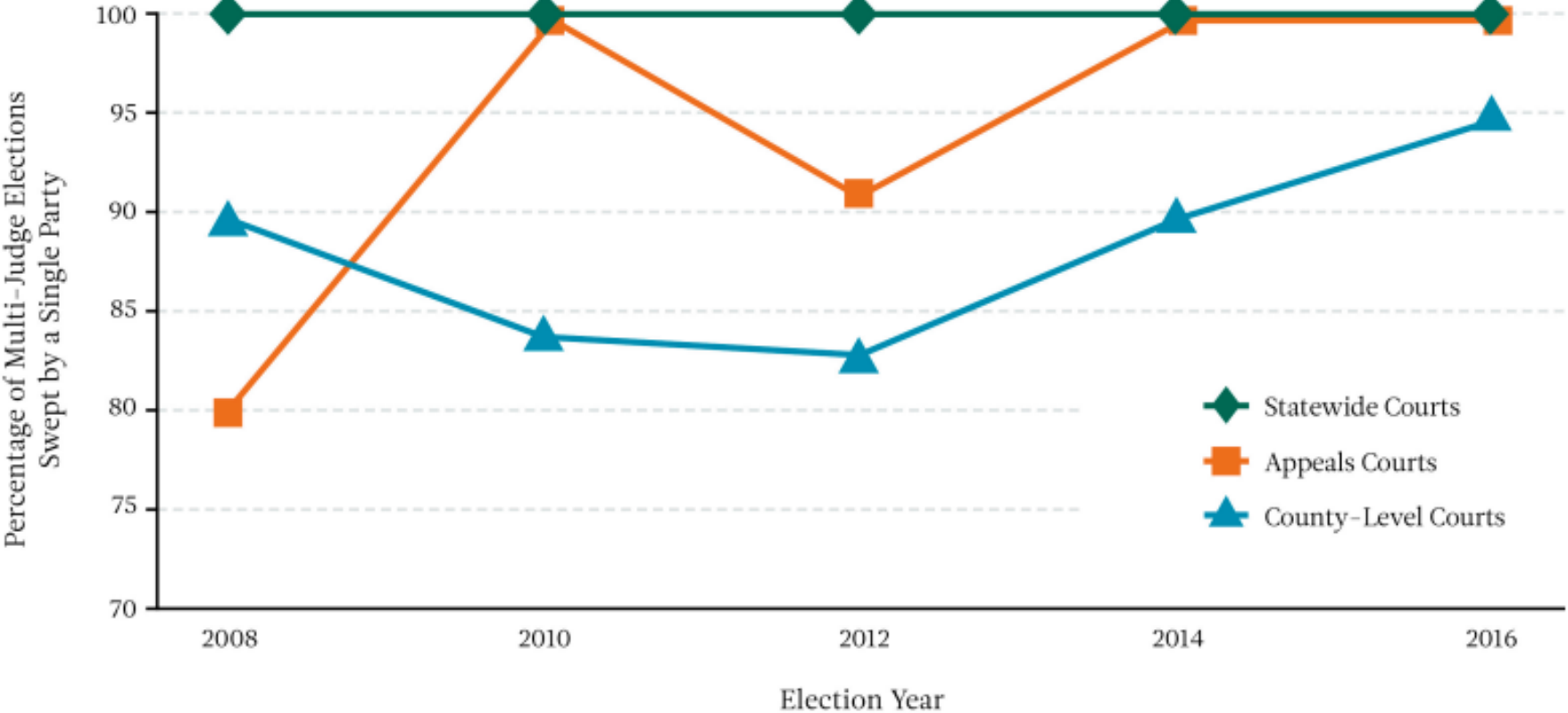
% of Incumbents Defeated in 2018 Election Cycle



	Total Number of Judges	Up for Reelection	Ran for Reelection	Lost Primary	Lost General	% Defeated
Appellate	98	50	41	0	20	49%
District	469	254	206	7	38	22%
Probate	18	18	14	0	4	29%
County Court at Law	246	228	192			14%

Partisan Sweeps in Appellate Courts, and District and Statutory County Courts in the State's 20 Most Populous Counties

Figure 4. Partisan Sweeps in Texas Judicial Elections (2008–2016)



Source: Mark P. Jones, *The Selection of Judges in Texas: Analysis of the Current System and of The Principal Reform Options*, Baker Institute for Public Policy (2017), available at <https://www.bakerinstitute.org/media/files/files/b38e1ecc/POLI-pub-TexasJudges-011317.pdf>

Partisan Sweeps in Harris County

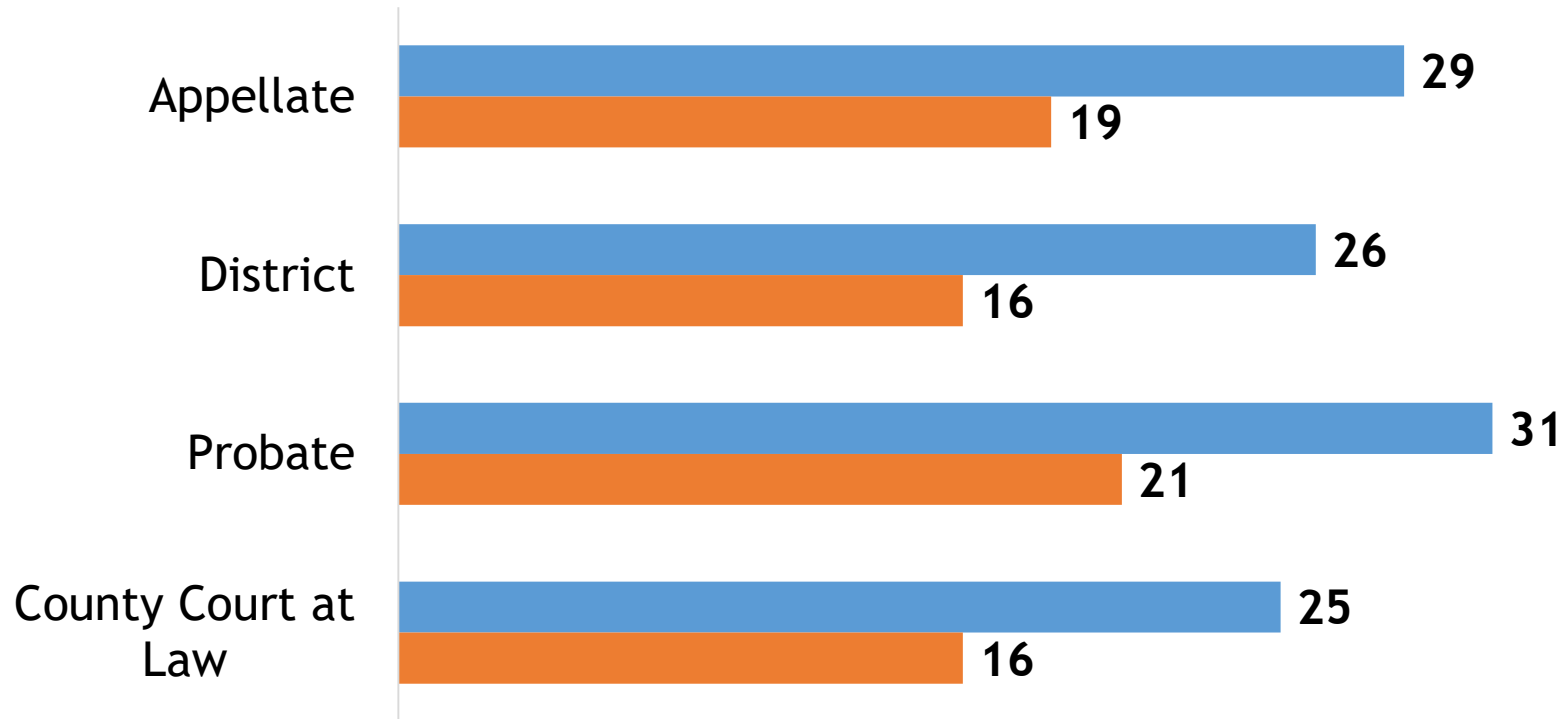
Table 3. County-Level Judicial Elections in Harris County (2008-2016)

Category	2008	2010	2012	2014	2016
Majority Party	Democratic	Republican	Democratic	Republican	Democratic
Share of Races Won By Majority Party	85%	100%	56%	100%	100%
Median Majority Judicial Vote Share	51.10%	55.95%	50.18%	54.73%	52.19%
25 Percent Quartile Majority Judicial Vote Share	50.16%	55.18%	49.79%	54.03%	51.40%
75 Percent Quartile Majority Judicial Vote Share	51.31%	56.87%	50.78%	55.34%	52.92%
Highest Majority Judicial Vote Share	52.48%	57.41%	51.38%	56.36%	54.11%
Lowest Majority Judicial Vote Share	48.58%	53.87%	49.09%	52.84%	50.93%
Majority Party Share of Two-Party Straight-Ticket Vote	53.23%	54.70%	50.17%	54.74%	54.10%
Percentage of Voters Using Straight-Ticket Option	62%	67%	68%	68%	66%
Number of Contested Two-Party Judicial Races	27	59	25	42	26

Source: Mark P. Jones, *The Selection of Judges in Texas: Analysis of the Current System and of The Principal Reform Options*, Baker Institute for Public Policy (2017), available at <https://www.bakerinstitute.org/media/files/files/b38e1ecc/POLI-pub-TexasJudges-011317.pdf>

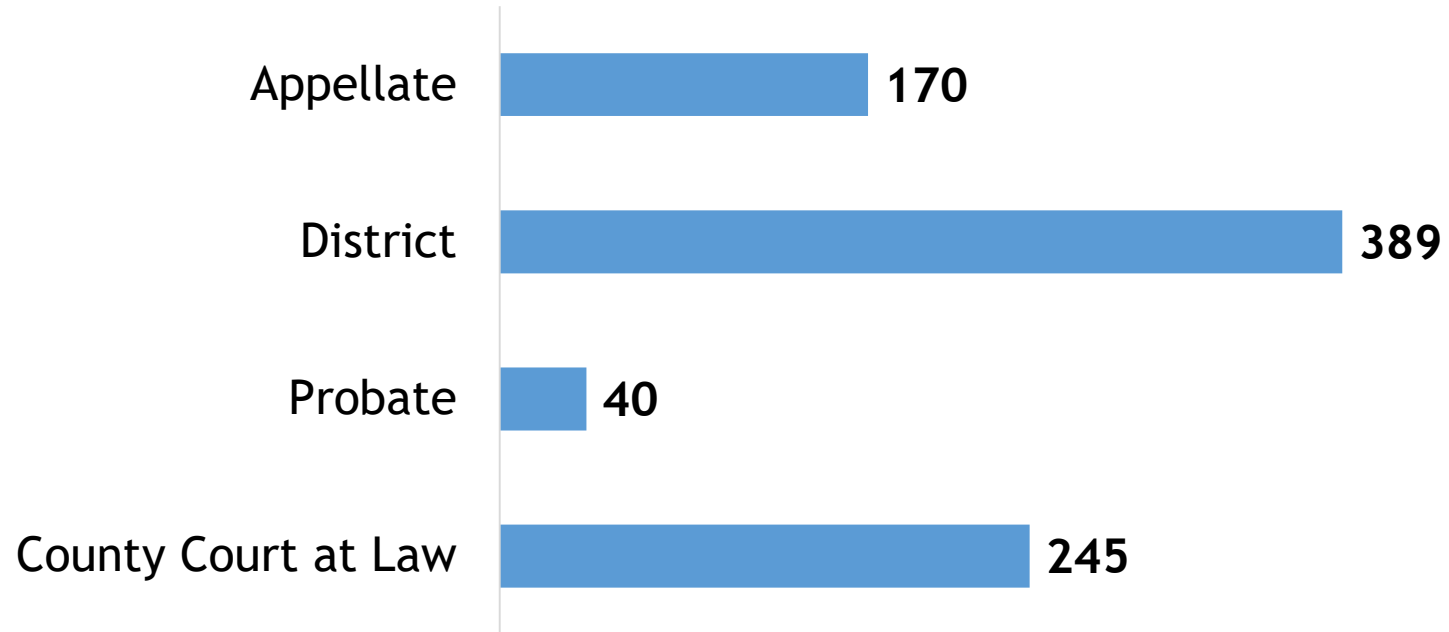
2018 Election

Median Years of Experience as an Attorney -
Defeated Judge vs. **Opponent**



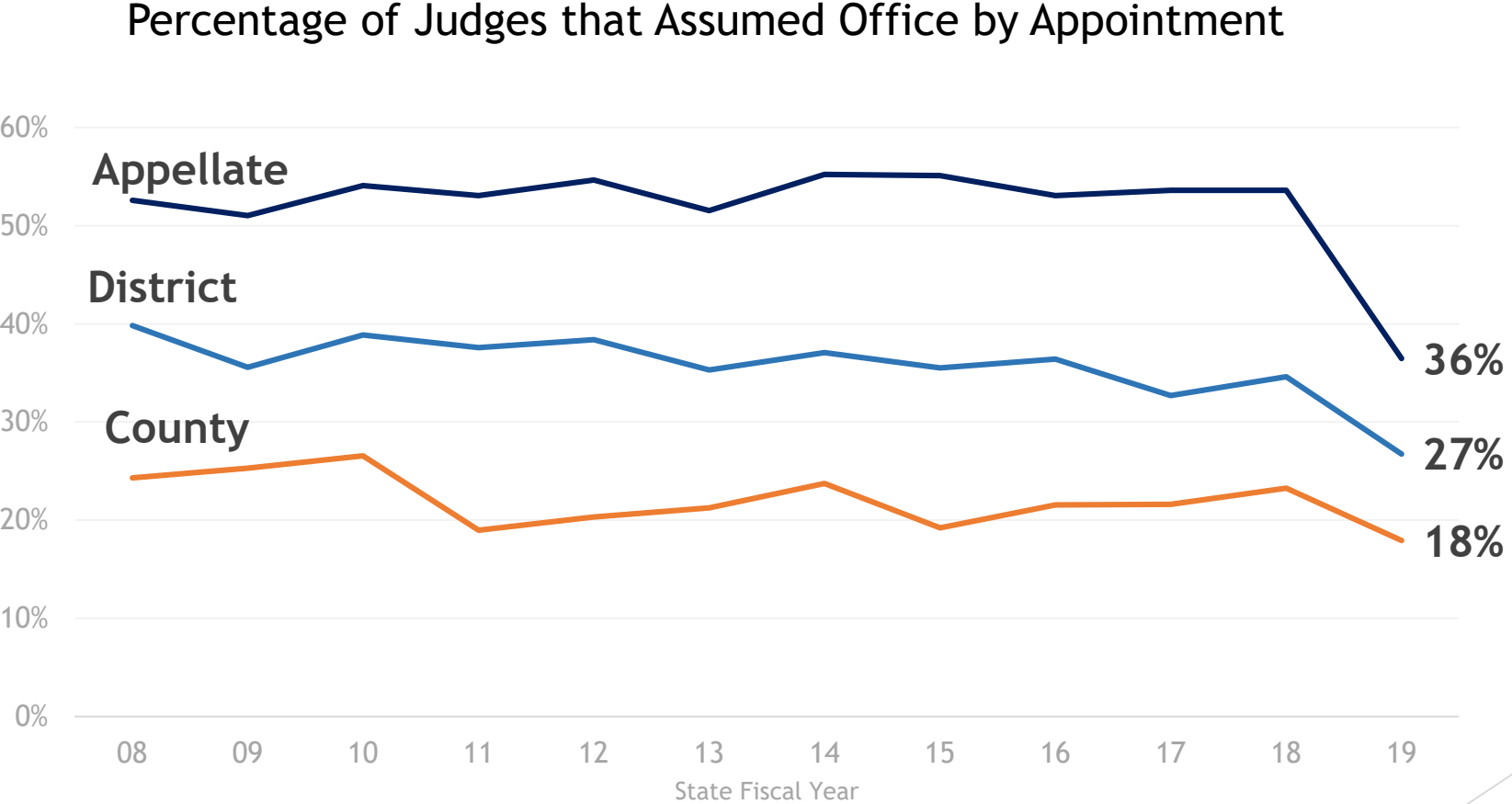
2018 Election

Defeated Judges Total Years of Experience in Position



Judges Assuming Office by Appointment

Prior to the last election, the majority of **appellate judges** assumed office by appointment, as did more than a third of **district** judges and more than a fifth of **county** judges.



Judges Assuming Office by Appointment - Retention Rates

Court Level	Total Appointed Since Jan. 1, 2010	Did Not Run for Reelection	No. Retained at 1 st Election	% Retained	Avg. Years Served of Judge Not Retained	Avg Years Served of Retained Judge
Appellate	34	0	26	76%	2	6
District	98	5	70	75%	1	6