



July 22, 2015

Pension Forfeiture

INITIAL CONSIDERATION

By Paul Neal
Senior Research & Policy Manager
360-586-2327
paul.neal@leoff.wa.gov

ISSUE STATEMENT

Should LEOFF Plan 2 members convicted of a crime related to their public duties forfeit their pensions?

OVERVIEW

Twenty-six states allow forfeiture of public pensions upon conviction of a crime related to public duties. Previous forfeiture bills introduced in Washington have not passed. Most recently, the Senate held a hearing on SB 6077, which would require pension forfeiture for members convicted of a felony committed related to his or her public employment. The committee did not bring the bill to a vote, in part, to give the Select Committee on Pension Policy and the LEOFF Plan 2 Board an opportunity to consider the issue.

Washington's Constitution, the Federal Constitution, and state statutes all include strong policies against forfeiture. However, concerns are raised when public employees convicted of crimes committed in the course of their duties receive public pension benefits. A recent King 5 report identified 22 teachers convicted of crimes including sexual abuse of students who continue drawing a pension.

This report will:

- Identify and compare policies for and against forfeiture
- Examine other state's approaches to public pension forfeiture
- Seek direction from the Board on further action, if any

BACKGROUND & POLICY ISSUES

Policies Favoring Forfeiture

Washington has a long standing policy that "...a criminal acquires no property rights in the fruits of his crime." An example is "slayer statutes" prohibiting a murderer from inheriting property

from the deceased. “It follows, therefore, as a general rule in such cases that, since no property is lawfully acquired by the crime, there is nothing to be forfeited on conviction for it.”¹

Based on this rule, slayers or abusers cannot receive public pension survivor benefits accrued by their victim.² A similar rationale supports laws in other states allowing forfeiture of public pensions for persons convicted of a crime.

Governing magazine reviewed public pension forfeiture laws in all 50 states (see Appendix A). It found 26 states with pension forfeiture laws which were often enacted after conviction of a public official or employee, such as the recent child sex abuse conviction of former Penn State assistant coach Jerry Sandusky. Ron Snell, senior fellow at the National Conference of State Legislatures (NCSL), stated in Governing:

“If there's a high-profile case, and it looks like somebody who's committed a dastardly crime is now going to be supported in his or her old age at the expense of the taxpayer, people take a look at that. In the years that I've been looking at this, I can't spot any trend other than that.”

It was such a case which led to the introduction of SB 6077 (see Appendix B) and the subsequent public hearing. King 5 ran a story in February 2015, *State Spends Millions on Convicted Teacher Retirements* (See Appendix C), about teachers convicted of sex offenses against students who were still receiving pensions.

The King 5 story included a table, reproduced in part below, dividing total pensions received by convicted teachers between the amount of their contributions plus interest and the amount coming from other sources, identified as the “difference.” The implication is that difference is paid by taxpayers.

Name	Monthly Pension	Contributions & Interest	Received	Difference
Malone, Jeanell M	\$1,242.30	\$74,991.63	\$108,274.37	\$33,282.74
Figley, Craig	\$3,111.99	\$177,693.84	\$214,577.72	\$36,883.88
Bone, William A	\$387.19	\$5,488.59	\$81,329.69	\$75,841.10
Maib, Kevin	\$2,175.69	\$112,193.11	\$218,772.58	\$106,579.47
Ball, John T	\$1,372.66	\$129,285.24	\$256,863.06	\$127,577.82
Castillo, Alfredo	\$577.80	\$20,288.71	\$156,429.79	\$136,141.08

¹ " Leonard v. Seattle 81 Wn.2d 479, 488 (1972)

² RCW 41.04.273

Policies Against Forfeiture

Constitutional Forfeiture Prohibition

Both the Federal and State Constitutions prohibit forfeiture. In the Federal Constitution, the prohibition was a rejection of centuries of English law punishing a person found guilty of treason or other felony by forfeiting all their property to the Crown (forfeiture) and denying their heirs any inheritance (corruption of blood). This law originally flowed from the feudal concept that all title was held by the nobility, and anything owned by others was by a grant from the Lord, in exchange for continued service or fealty. Persons committing treason or some other felony broke that bargain justifying forfeiture of property and reversion back to the Noble.

By the time of the American Revolution, this law was sometimes used in Great Britain to destroy political enemies, convicting them on trumped up charges and ruining them and their heirs. The Constitution's authors saw this an example of the English tyranny they had rebelled against, and included the following clause in the Constitution:

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.³

A similar, though broader, prohibition was included in the Washington State Constitution, Article. 1, § 15:

No conviction shall work corruption of blood, nor forfeiture of estate.

Past Washington forfeiture statutes have been invalidated. The pre-LEOFF municipal police fire system (chapter 41.20 RCW) includes this forfeiture provision⁴:

Whenever any person who shall have received any benefit from said fund shall be convicted of any felony, or shall become an habitual drunkard, ...such pension or allowance that may have been granted to such person shall immediately cease, and such person shall receive no further pension or allowance or benefit under this chapter...

The Court struck down this statute in *Leonard v. Seattle*, 81 Wn.2d 479 (1972).

In *Leonard*, a former Seattle police officer was convicted of unlawful possession of an unregistered machine gun four years after retiring. The pension Board forfeited his pension and he sued claiming a constitutional violation. The Court agreed, ruling the statute violated the forfeiture clause. It came to the conclusion in part because the offense had been committed

³ U.S. Const. art. 3, § 3, clause 2.

⁴ RCW 41.20.110.

after retirement, having no connection with Leonard's actions as a police officer. The opinion suggested a member committing a crime in the course of his or her employment arguably does not lawfully acquire title to a pension, and it could potentially be forfeited without violating the Constitution.

Statutory Forfeiture Provisions

All of Washington's public pension systems, including LEOFF, prohibit forfeiture of pension benefits, see for example RCW 41.26.053. The protection of pensions from forfeiture embody the bedrock pension policy of anti-alienation.

Possibly based on the *Leonard* decision's discussion that a benefit might be withheld if the criminal act were committed while on duty, the law does allow forfeiture of the right to a disability benefit "if the disability is the result of criminal conduct by the member."⁵

Policy Considerations

Governing magazine discussed forfeiture policy with Keith Brainard, research director for the National Association of State Retirement Administrators (NASRA). He concludes that there is also a policy question at play with pension forfeitures:

Are pensions gifts from the states, which can be rightly revoked for criminal behavior? Or are they earned elements of an employee's compensation, which are not subject to be annulled for any reason? After all, most convicted criminals don't typically lose their property as part of their sentence, Brainard said. Should the families of those convicted "be punished... because of something they had no control over?" Snell asked rhetorically. "Normally, an employer wouldn't and probably couldn't go claim back wages that were paid," Brainard explained, "and pension benefits are part of compensation just as much as wages."

Further arguments against forfeiture were raised during the hearing on SB 6077 and a second bill proposing pension garnishment, SB 6076. Crime victim advocates expressed concerns that forfeiting or otherwise alienating the convicted person's pension would take away a source of recompense from crime victims as well as support for innocent family members.

⁵ See RCW 41.26.061 (LEOFF); RCW 41.32.054 (TRS); and RCW 41.40.054 (PERS).

Forfeiture Provisions

Laws of Other States

Twenty-six of the 50 states have public pension forfeiture laws. These laws take different approaches to pension forfeiture, as outlined below. For a summary of these provisions by State see Appendix A.

- **To Whom the Statutes Apply.** Most pension statutes apply to all members of the retirement system. Some, however, limit their coverage to specific classes of employees such as judges or police officers.
- **Offenses Triggering Pension Forfeiture.** Different statutes provide for forfeiture for:
 - Any felony conviction
 - Conviction for a felony “related to” the employee’s official duties
 - Conviction of certain enumerated offenses
 - Conviction of crime violating the public trust
 - Refusal to testify on matters relating to public duties
- **Full vs. Partial Forfeiture.** States differ on the extent of forfeiture:
 - Full forfeiture
 - Refund of employee contributions, either with or without interest, with forfeiture of any other benefit
 - Forfeiture limited to restitution to state for losses incurred by employee’s criminal behavior
 - Garnishment to pay fines resulting from criminal act
- **Mandatory vs. Discretionary Forfeiture.** Some states require mandatory forfeiture upon conviction, while others allow some or all of pension to be preserved. Still others give decision makers discretion to continue the pension, at least partially, to allow for:
 - Support of dependents
 - Consideration of mitigating factors such as:
 - Employee’s length of service
 - Extent of vesting
 - Nature and gravity of offense, such as ongoing pattern of corruption vs. fixing one ticket
 - Availability and adequacy of other penal sanctions

Senate Proposal in SB 6077

SB 6077, as proposed and heard by the Senate, proposed the following forfeiture provisions:

- Applies to all members of a public retirement system
- Triggered if crime committed in the course of, or related to, public employment
- Employee entitled to refund of contributions without interest, less any benefits received
- All or part of forfeited pension could be awarded to spouse, former spouse, or a dependent. SB 6077 includes a list of factors for the Court to consider in deciding whether to make such an award

- Mandatory forfeiture upon conviction of a felony, including conviction pursuant to nolo contendere (non-contested) plea
- Bill would apply to felonies committed after effective date of the bill

Possible Future Action

In deciding whether to move forward on this issue, it may be helpful for the Board to consider the threshold issue of whether it believes pension forfeiture in Washington is good policy. If so the Board could direct staff to bring back options for implementing pension forfeiture.

SUPPORTING INFORMATION

Appendix A: *Scandals Spur Action on Pension Forfeitures* by Dylan Scott in Governing, February 29, 2015

Appendix B: Senate Bill 6077 - AN ACT Relating to the forfeiture of the pension of a public employee convicted of a felony for misconduct associated with such person's service as a public employee

Appendix C: *State Spends Millions on Convicted Teacher Retirements* Danielle Leigh, King 5 news, February 23, 2015

APPENDIX A: GOVERNING REPORT ON FORFEITURE.

Scandals Spur Action on Pension Forfeitures

BY: [Dylan Scott](#) | February 29, 2012

Jerry Sandusky, the former Penn State assistant football coach who has been accused of molesting young boys, some while he was employed by the university, received nearly \$150,000 when he retired in 1999 and continues to receive monthly payments adding up to a \$58,898 annual pension, according to the (Harrisburg, Pa.) [Patriot-News](#). Gary Schultz, former Penn State interim senior vice president of finance and business who has been accused of not reporting child sexual abuse as well as perjury, has received nearly \$331,000 annually since retiring in 2009 and collected a lump sum of more than \$420,000 upon his retirement, according to the *Patriot-News*.

But, in a strange twist, it is more certain that Schultz will lose his public pension than Sandusky if both are convicted of what they are accused of. Pennsylvania law stipulates particular crimes for which a public employee can lose his or her pension, which are [listed](#) by the Pennsylvania State Employees' Retirement System. Perjury is one of them. The various crimes related to sexual abuse of which Sandusky is accused, more than 50, are not. Heather Tyler, a spokesperson for the retirement system, told *Governing* each case is reviewed after its completion to determine whether an employee's pension should be revoked, noting that the pension board has "no discretion in applying the law."

In the wake of the Sandusky scandal and amid the general push toward pension reform, *Governing* decided to take a look at pension forfeiture laws across the country. According to research by *Governing* staff, 25 states have some kind of pension forfeiture provision related to committed crimes, while 25 states plus the District of Columbia do not.

Some might find the idea repulsive: A public official alleged of committing or convicted of a crime could collect a [pension](#) check at the expense of taxpayers. California Gov. Jerry Brown is among them: as part of his pension reform package introduced this month, he has proposed revoking the pensions of public employees who are convicted of a felony related to their public duties, according to the [Los Angeles Times](#), in part because of his anger over the Bell, Calif. corruption case. California already has a law addressing the pensions of elected public officials if they commit a felony.

The laws vary widely from state to state. Some require forfeiture for felonies; others open it to misdemeanors as well. In some, like Pennsylvania, specific crimes are listed for which a public employee can lose his or her pension. But in others, the state law stipulates more generally that pensions can be revoked for any crimes related to official duties. Most have statutes in the state code. South Dakota has administrative rules in place for its pension board.

Policies in some states, such as Idaho, Indiana and Colorado, allow only for public pensions to be used to pay for restitution in a criminal case, rather than outright revoked. For *Governing's* purposes, those laws were not considered full pension forfeiture policies, as an employee would continue to receive their pension outside what they are required to reimburse. Laws in a few states, including Texas and New Mexico, that cover only judicial officers were not counted, as they exclude the vast majority of public employees and officials. Statutes that revoke a pension only if a beneficiary causes the death or disability of a pension plan member, such as in Minnesota and Montana, were also not included.

'Headline Risk'

Despite the scrutiny that public pensions are under, neither Keith Brainard, research director for the National Association of State Retirement Administrators (NASRA), nor Ron Snell, senior fellow at the National Conference of State Legislatures (NCSL), believes pension forfeitures would typically be part of broader pension reform. Instead, state policies are usually developed as reactions to high-profile scandals, such as the cases at Penn State and in California. The absence of a policy is largely a "headline risk," as Brainard calls it, rather than a "fiscal or actuary risk."

In Pennsylvania, state lawmakers are aiming to pass legislation that would add sex crimes against children to the list of crimes for which a pension can be revoked, the [Philadelphia Daily News](#) reported last November. Bills had been introduced this summer, the result of a [Daily News report in July](#) that former Philadelphia police officers convicted of child sexual abuse were still collecting city pensions, but gained renewed relevance after Sandusky's indictment on Nov. 4.

http://www.governing.com/templates/gov_print_article?id=134332368

7/15/2015

No bill has come to a vote, though. State Rep. Brendan Boyle, who introduced [one of the bills](#), told *Governing* that he sent a letter to state Rep. Daryl Metcalfe, chairman of the House State Government Committee, asking for a hearing on his legislation, but nothing has been scheduled as of Feb. 29. Boyle admits "there is a certain amount of inertia" for any bill. "Other things are competing for time on the agenda," Boyle said. With other issues such as redistricting occupying the legislature's time, he acknowledged that it has been difficult to galvanize interest and support for his bill.

As in Pennsylvania, other historical examples show that pension forfeiture legislation is often proposed in response to a headline-attracting controversy. Tennessee's pension forfeiture policy has undergone an evolution when state lawmakers encountered new circumstances that weren't covered in previous incarnations of the law. The first law, effective in 1982, was adopted in response to a scandal involving former Gov. Ray Blanton, who was convicted of selling liquor licenses, according to a 2006 article in *The Tennessean*. It revoked pensions for state officials who were convicted of a felony in a state court. A second law was passed in 1993 after former county circuit judge David Lanier was convicted of federal sexual harassment charges, *The Tennessean* reported, adding federal crimes to the list of reasons for which a pension could be revoked.

After Operation Tennessee Waltz in 2005, in which seven state legislators, some longstanding politicians who took office before the 1982 law was instituted, were convicted on corruption charges, legislators approved yet another forfeiture law. It established that elected public officials, elected or re-elected in 2006 and after, consent to the state's pension forfeiture policies each time they are re-elected -- regardless of their original entry date into office.

One of the most high-profile corruption stings at the time -- Operation Boptrout -- led to the Kentucky Legislature to update its pension forfeiture laws, which had covered only hired employees since 1956. As the result of a federal investigation that concluded in 1993, 15 state legislators, along with lobbyists and public officials, were convicted of crimes such as bribery, extortion, fraud and racketeering, according to the *New York Times*. The state statute, effective in 1993, demanded forfeiture of pension benefits if a legislator or former legislator is convicted of a felony related to their official duties.

Connecticut lawmakers scrambled to find a way to prevent former Gov. John Rowland, convicted in 2004 of selling access to his office for personal gain, from receiving the \$50,000 annual pension to which he was entitled when he turned 55, the *Hartford Courant* reported in April 2008. A new law was adopted in October 2008, requiring the state attorney general to request a court order to have the pension rescinded. However, it was too late to revoke Rowland's pension; Constitutional law is routinely interpreted to prohibit laws being applied retroactively, NCSL's Snell said.

But in the case of former Illinois Gov. Rod Blagojevich, convicted on 18 counts of corruption last year, a statute was already in place to ensure he wouldn't receive any of the \$65,000 annual pension he had earned as governor, the *Associated Press* reported. Tim Blair, executive secretary for the state retirement system, told *Governing* that Illinois's pension forfeiture policy went into effect on July 9, 1955, making it one of the oldest on record in a state that had endured several corruption scandals prior to the 1950's. But Blagojevich would be entitled, under state law, to the \$129,000 that he paid into the state retirement system.

"If there's a high-profile case, and it looks like somebody who's committed a dastardly crime is now going to be supported in his or her old age at the expense of the taxpayer, people take a look at that," Snell said. "In the years that I've been looking at this, I can't spot any trend other than that."

'It's Not A Burning Issue'

Why do some states not have pension forfeiture laws? The reasons are difficult to pinpoint, and no conclusive research has been conducted. But situations in New York and Washington might provide some insight. Following a string of corruption scandals, the *Seattle Times* floated the possibility of a state pension forfeiture law in an [extensive article](#) on Washington's lack of a policy published in 1993. When asked about his organization's stance on the theoretical legislation, Mike Patrick, then-executive director of the Washington State Council of Police Officers, told the *Times* that his organization would fight such a policy. Legislation was proposed later in 1993, according to the *Times*, but didn't pass. As of 2012, Washington state still has no pension forfeiture policy.

In New York, pension forfeiture legislation was introduced annually from 1988 to 1992, *Newsday* reported in 1994, but never moved past the committee stage. "It's not a burning issue up here," an aide to then-state

Sen. Caesar Trunzo, who repeatedly sponsored the proposals, told the newspaper. Police unions voiced firm opposition to the bills and lobbied against them, according to *Newsday*. "If I spend 18 or 19 years serving the public and commit one indiscretion, I shouldn't be penalized for a life's work," Kenneth Long, chairman for the legislative committee of the Metropolitan Police Conference of New York State, told the newspaper.

Current New York Gov. Andrew Cuomo successfully passed a pension forfeiture law as part of an ethics reform package last year. It will target select public officials who commit felonies, but only new plan members will be affected by the law.

Generally speaking, public employee unions don't fret over pension forfeiture policies, Steven Kreisberg, director of collective bargaining at the American Federation of State, County and Municipal Employees (AFSCME), told *Governing*. Firstly, instances of pension forfeiture are exceedingly rare, Kreisberg said, and it hasn't been a focal point of reform. AFSCME does favor certain policies, though, Kreisberg added, particularly those that give the judicial system the discretion to decide whether or not a pension should be revoked -- as opposed to a policy with "blanket application." Arizona, for instance, gives courts leeway in how much of a pension is rescinded. Connecticut requires the state attorney general to request a court order that a pension be revoked following a conviction, leaving the decision ultimately to a judge.

'The Public's Right to Conscientious Service'

NASRA's Brainard told *Governing* that there is also an interesting philosophical question at play with pension forfeitures. Are pensions gifts from the states, which can be rightly revoked for criminal behavior? Or are they earned elements of an employee's compensation, which are not subject to be annulled for any reason? After all, most convicted criminals don't typically lose their property as part of their sentence, Brainard said. Should the families of those convicted "be punished... because of something they had no control over?" Snell asked rhetorically.

"Normally, an employer wouldn't and probably couldn't go claim back wages that were paid," Brainard explained, "and pension benefits are part of compensation just as much as wages."

The Illinois Supreme Court provided an answer of sorts in a ruling concerning the state's pension forfeiture law. In declaring that the state pension board had a right to revoke former Gov. Otto Kerner's pension after his conviction of several federal felonies that took place while he was in office, Justice Robert Underwood wrote in 1978 that the pension forfeiture statute was designed for the purpose of ensuring "the public's right to conscientious service from those in governmental positions."

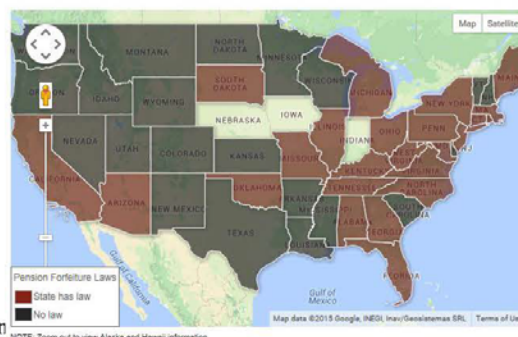
As Pennsylvania continues to confront the same issue more than 30 years later, Rep. Boyle expressed a similar sentiment.

"In light of all the attention that public pensions have received and the tight financial situation that we're facing, it's incumbent on us to ensure that the most egregious offenders don't receive public pensions," he said.

UPDATE: Maine Gov. Paul LePage signed a pension forfeiture bill into law on April 9, 2012. Alabama Gov. Robert Bentley signed a pension forfeiture bill into law on May 15, 2012. Story and map have been updated to reflect change.

Caroline Cournoyer, Kathy Gambrell, Derek Quizon and Tina Trenkner assisted in researching this story. Map by Mike Maciag.

State Pension Forfeiture Laws



7/15/2015

Pension Forfeiture Laws	
<input type="checkbox"/>	State has law
<input type="checkbox"/>	No law

NOTE: Zoom out to view Alaska and Hawaii information

State	Code	Description
Alabama	SB 213	Pensions of public employees and officials can be revoked for conviction of felony related to public duties.
Alaska	AS 37.10.310	Pensions of public officers, legislators and legislative directors can be revoked if convicted of any crime in connection with official duties; may award forfeited pension to a spouse, dependent, or former spouse.
Arizona	13-713	Pensions of public employees and officials can be revoked for conviction of any felony related to official duties.
California	AB 1044, Chapter 322, Statutes of 2005	Pensions of elected public officials can be revoked for conviction of any felony relating to official duties.
Connecticut	Chapter 11a Sec. 1-110	Pensions of public officials and employees can be revoked for conviction of any crime relating to official duties.
Florida	FRS 112.3173	Pensions of public officials and employees can be revoked for conviction of any felony involving a "breach of public trust."
Georgia	47-1-21	Pensions can be revoked for public employees and officials convicted of any crime related to official duties.
Illinois	ILCS 40 5/2-156	Pensions of public employees and officials can be revoked for conviction of any felony related to official duties. Trustees of individual pension fund make final decision after conviction.
Kentucky	KS161.470	Pensions of public employees and officials can be revoked for conviction of any felony related to official duties.
Maine	Sec. 12 MRSA 17062	Pension of public employees and officials can be revoked for conviction of crime related to official duties.
Maryland	Joint Resolution 4 of 2010	Pensions of state legislators can be revoked for conviction of any felony committed while in office or a misdemeanor related to a member's official duties and responsibilities.
Massachusetts	Title IV, Chapter 32, Section 15	Pensions of plan members can be revoked for conviction of any criminal offense related to official duties.
Michigan	MCL 800.401; MCL 38.2701	Pensions can be withheld to pay for cost of incarceration. Court may withhold pensions of employees convicted of any felony arising from official duties.
Missouri	104.1084.8	

http://www.governing.com/templates/gov_print_article?id=134332368

7/15/2015

		Pensions of state legislators or statewide elected officials can be revoked for conviction of any felony related to official duties.
New Jersey	43:1-3.1	Pensions of public officials and employees can be revoked for conviction of any crime related to their public service.
New York	Article 3-B of Retirement and Social Security Law	Pensions of certain public officials and employees can be revoked for conviction of certain felonies related to public service.
North Carolina	135-18.10	Pensions of public employees and officials can be revoked for conviction of specific list of felonies.
Ohio	2929.192	Pensions of public officials and employees can be revoked for conviction of specific list of felonies during time of public service.
Oklahoma	51-24.1	Pensions of public officials and employees can be revoked for conviction of any felony during time of public service.
Pennsylvania	Act 140	Pensions for public officials and employees can be revoked for conviction of specific list of crimes.
Rhode Island	36-10.1-3	Pensions of public officials or employees can be revoked for conviction of any crime related to official duties.
South Dakota	20:16:15:28	Administrative rule dictates pension must be forfeited if member is convicted of any crime involving embezzlement for pension commission funds or property.
Tennessee	8-35-124	Pensions of public employees can be revoked if convicted of any crime related to official duties in either state or federal court.
Virginia	51.1-124.13	Pensions of public officials can be revoked for conviction of any felony in association with the performance of public duties.
West Virginia	5-10-A-1	Pensions of public officials or employees can be revoked if service is deemed "less than honorable."

This article was printed from: <http://www.governing.com/blogs/view/gov-scandals-spur-action-on-pension-forfeitures.html>

APPENDIX B – SENATE FORFEITURE PROPOSAL SB 6077

SENATE BILL 6077

State of Washington 64th Legislature 2015 Regular Session

By Senators Bailey, Litzow, Benton, Baumgartner, Sheldon, Becker,
Angel, Schoesler, Hewitt, Miloscia, Braun, and Fain

Read first time 03/04/15. Referred to Committee on Ways & Means.

1 AN ACT Relating to the forfeiture of the pension of a public
2 employee convicted of a felony for misconduct associated with such
3 person's service as a public employee; adding a new section to
4 chapter 41.04 RCW; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 41.04
7 RCW to read as follows:

8 (1) Notwithstanding any other law, if a member of a state
9 retirement system or plan listed in RCW 41.50.030 is convicted of or
10 pleads guilty or nolo contendere to an offense that is a class 1, 2,
11 3, 4, or 5 felony that was committed in the course of, or was related
12 to, the member's employment, as a public official or public employee,
13 the court shall order the person's membership terminated and the
14 person shall forfeit all rights and benefits earned under the state
15 retirement system or plan. A member who forfeits all rights and
16 benefits earned pursuant to this section is entitled to receive, in a
17 lump sum amount, the member's contribution to the state retirement
18 system or plan without interest, less any benefits already received.

19 (2) An order forfeiting a member's benefits on conviction of an
20 offense listed in subsection (1) of this section shall not be stayed
21 on the filing of any appeal of the conviction. While an appeal of the

1 conviction is being adjudicated and until a final judgment is issued,
2 the department of retirement systems shall suspend payments to the
3 member and hold the assets in trust. If the conviction is reversed on
4 final judgment, no rights or benefits shall be forfeited.

5 (3) Notwithstanding subsection (1) of this section, the court may
6 award to a spouse, dependent, or former spouse of a member who is
7 subject to subsection (1) of this section some or all of the amount
8 that was forfeited under subsection (1) of this section. The award
9 under this subsection shall not require the department of retirement
10 systems to provide any type, form, or time of payment of survivor or
11 retirement benefits or any survivor or retirement benefit option that
12 is not provided by the laws governing the state retirement system or
13 plan from which the award is being made.

14 (4) In determining whether to make an award under subsection (3)
15 of this section, the judge shall consider the totality of
16 circumstances, including:

17 (a) The role, if any, of the person's spouse, dependent, or
18 former spouse in connection with the illegal conduct for which the
19 person was convicted;

20 (b) The degree of knowledge, if any, possessed by the person's
21 spouse, dependent, or former spouse in connection with the illegal
22 conduct for which the person was convicted;

23 (c) The community property nature of the benefits involved; and
24 (d) The extent to which the person's spouse, dependent, or former
25 spouse was relying on the forfeited benefits.

26 (5) The court shall provide a copy of the order of forfeiture to
27 the department of retirement systems.

28 (6) This section applies only to members who commit a felony
29 after the effective date of this section.

--- END ---

State spends millions on convicted teachers retirements

They were supposed to teach our kids, but instead many of these teachers victimized them. Now they're retired and getting monthly checks with the help of your tax dollars. Danielle Leigh reports.

Danielle Leigh, KING 5 News 7:49 p.m. PST February 23, 2015

In Washington, public employees who commit a crime don't lose their taxpayer guaranteed retirements, and teachers can earn the right to a lifetime retirement after working for as little as five years.



In Washington, public employees who commit a crime don't lose their taxpayer guaranteed retirements, and teachers can earn the right to a lifetime retirement after working for as little as five years.

KING 5 asked the state for a list of all the teachers who have had their Washington teaching license revoked and compared that list to a list of all the public employees receiving a pension.

The state has multiple retirement plans for teachers. Two of them would be considered a traditional pension plan, the third includes a private component. KING 5 only focused on the first two.

That led to a list of 22 teachers, most who had been convicted of crimes against children, who together have received about \$5.1 million above their own retirement contributions, interest included as of the end of 2014.

Convicted Teachers Receiving Pension Benefits

Name	Monthly	Contributions & Interest	Received	Difference
Malone, Jeanell M	\$1,242.30	\$74,991.63	\$108,274.37	\$33,282.74
Figley, Craig	\$3,111.99	\$177,693.84	\$214,577.72	\$36,883.88
Bone, William A	\$387.19	\$5,488.59	\$81,329.69	\$75,841.10
Maib, Kevin	\$2,175.69	\$112,193.11	\$218,772.58	\$106,579.47
Ball, John T	\$1,372.66	\$129,285.24	\$256,863.06	\$127,577.82
Castillo, Alfredo	\$577.80	\$20,288.71	\$156,429.79	\$136,141.08
Stiltner, Kirk Forrest	\$3,083.80	\$141,670.92	\$284,632.16	\$142,961.24
Carrera, Ruben	\$3,244.83	\$144,284.19	\$301,313.46	\$157,029.27
Gordon, Douglas E	\$1,760.16	\$92,599.20	\$262,471.94	\$169,872.74
Loftus, Christopher	\$1,765.69	\$93,634.56	\$281,168.82	\$187,534.26
McDonald, Alan D	\$2,782.30	\$192,853.05	\$393,178.65	\$200,325.60
Hill, Laurence E "Shayne"	\$2,629.35	\$125,902.87	\$334,471.03	\$208,568.16
Deming, James Randolph	\$2,936.99	\$115,356.85	\$347,391.46	\$232,034.61
Stritmatter, Ande R	\$2,056.35	\$108,626.86	\$431,804.48	\$323,177.62
Anderson, David Lloyd	\$2,042.05	\$97,249.05	\$449,280.15	\$352,031.10
Mainger, Roy W	\$1,979.23	\$96,885.18	\$451,924.68	\$355,039.50
Altheide, Jerome B	\$1,913.59	\$105,952.83	\$462,685.73	\$356,732.90
Pierson, Larry	\$3,539.41	\$130,627.14	\$488,438.58	\$357,811.44
Norman Standley	\$2,042.29	\$85,055.36	\$455,932.72	\$370,877.36
Ellwanger, Charles	\$1,532.25	\$24,213.10	\$426,010.78	\$401,797.68
Stacy, Kenneth	\$2,164.95	\$104,560.02	\$508,168.12	\$403,608.10
Pickerel, William B	\$3,086.60	\$114,971.38	\$571,878.63	\$456,907.25

That's about \$236,027.95 on average per person.

The list includes people like Norman Standley, David Lloyd Anderson, William Pickerel, Ruben Carrera, Alfredo Castillo and Ande Stritmatter, who were all found guilty of child molestation, Larry Pierson who was found guilty of assault with sexual motivation, Craig Figley who is

serving a life sentence for molesting children and Christopher Loftus who was convicted of child rape.

In one specific example, KING 5 looked at the records for Laurence "Shayne" Hill. Hill was convicted on multiple counts of child molestation in King County in 2005 after he admitted to molesting his 10-year-old and 11-year-old students.

By the end of last year, Hill had received about \$334,471.03 from the state retirement system; just over \$208,568.16 was money above and beyond what Hill contributed into his own retirement, interest included.

"What! It's that gut reaction of, 'Oh, my gosh!' This person is in prison for this and they are receiving several thousand dollars a month? What?!" exclaimed Anne Marie Gurney, a researcher with the Freedom Foundation, a conservative policy group in Washington state.

Gurney contacted KING 5 with concerns about the state's pension laws.

"To a certain degree, we need to protect our taxpayers," Gurney said.

At least 25 states, including Alaska, California, and Arizona, have pension forfeiture laws, in other words public employees and/or elected officials convicted of a crime lose at least some aspect of their taxpayer funded retirements.

Washington does not have a pension forfeiture law.

"I really think that probably it has never really come to the surface," said State Senator Barbara Bailey, R-Oak Harbor.

Bailey is the chair of the Select Committee on Pension Policy.

"I would agree, you know some things are so egregious you really can't understand how these things can happen," Bailey said regarding teachers who have committed crimes against children and are still receiving a pension.

Bailey said she'd consider whether public employees who commit a crime should be required to forfeit a portion of their pension, for instance to help pay for incarceration costs.

"I think that is only fair, and I think taxpayers would agree," Bailey said.

Rep. Timm Ormsby, D-Spokane, said he would be open to considering some kind of pension forfeiture law for future hires, but he would want to make sure whatever penalty was imposed only negatively impacted the person who committed the crime and not his or her dependents.

"I would fight it," said Kit Raney, President of the Washington Teacher's Association-Retired. She represents the interests of retired teachers.

"So, this is just pure noise and a non-issue as far as I'm concerned," Raney said.

Raney said she doesn't believe teachers should lose their pensions under any circumstance.

"If a worker commits a crime, it is handled by the legal system. The trial, the conviction is part of the legal system. It is totally separate from the pension system, which they contributed to and earned throughout their career. It's apples and oranges," Raney said.

Raney accused the Freedom Foundation of being anti-teacher and anti-pension.

Gurney said the issue is not teachers or their pensions, but creating the legal room for taxpayers to have a choice.

"I think taxpayers should have a choice if they are going to fund the pension of hardened criminals," Gurney said.

Any new legislation would be met with by lot of resistance.

For now, Senator Bailey said she's studying her options and the earliest she would propose a bill would be next year.



Pension Forfeiture

Initial Consideration

Issue

- **Should LEOFF Plan 2 members convicted of a crime related to their public duties forfeit their pensions?**

Background

- **SB 6077 proposed forfeiture of public employee pensions if the member is convicted of a felony related to their public duties**
- **26 states provide for forfeiture, 24 do not**
- **Issue raised in Washington by King 5 report in February 2015**

Policies Favoring Forfeiture

- **“(A) criminal acquires no property rights in the fruits of his crime” *Leonard v. Seattle* 81 Wn.2d 479 (1972)**
- **Slayer statute – RCW 41.04.273**
- **Response to high profile cases - King 5 article: *State Spends Millions on Convicted Teachers’ Retirements***

Policies Against Forfeiture

- **Constitutional and Statutory Provisions on Forfeiture:**
 - Federal Constitution prohibits forfeiture to punish treason
 - Washington Constitution prohibits forfeiture on account of any criminal conviction
 - *Leonard v. Seattle*, 81 Wn.2d 479 (1972)
 - RCW 41.25.053 prohibits forfeiture and most forms of garnishment

Policies Against Forfeiture

- **Pensions are protected to provide for retirees during their declining years - allowing forfeiture unravels that policy**
- **Taking away a pension deprives a person of benefits earned prior to the crime**
- **Forfeiting a pension can:**
 - Deprive crime victims of a source of restitution
 - Deprive innocent family members of support

Forfeiture Provisions Nationwide

- **Usually apply to all members, but some limit coverage to specific classes of employees such as judges or police officers**
- **Offenses Triggering Pension Forfeiture Differ by State**
 - Any felony conviction
 - Conviction for a felony “related to” the employee’s official duties
 - Conviction of certain enumerated offenses
 - Conviction of crime violating the public trust
 - Refusal to testify on matters relating to public duties

Forfeiture Provisions Nationwide

- **States differ on the extent of forfeiture:**
 - Full forfeiture
 - Refund of employee contributions, either with or without interest, with forfeiture of any other benefit
 - Forfeiture limited to restitution to state for losses incurred by employee's criminal behavior
 - Garnishment to pay fines resulting from criminal act
- **Some give discretion to continue the pension to allow, at least partially, for:**
 - Support of dependents
 - Consideration of mitigating factors

Senate Proposal SB 6077

- **SB 6077 proposed the following forfeiture provisions:**
 - Applies to all public retirement systems
 - Triggered if crime is related to their public duty
 - Refunds employee contributions without interest, less any benefits received
 - All or part of forfeited pension could be awarded to spouse, former spouse, or a dependent

Senate Proposal SB 6077 - Continued

- **SB 6077 proposed the following forfeiture provisions:**
 - Mandatory forfeiture upon conviction of a felony,
 - Bill would apply to felonies committed after effective date of the bill

Next Steps

- **Direct staff to provide further information and options**
- **Take no further action**

Questions?

Contact:

Paul Neal

Senior Research and Policy Manager

(360) 586-2327

paul.neal@leoff.wa.gov