



As State Police overtime probe intensifies, troopers race to lock in pensions and retire



BARRY CHIN/GLOBE STAFF

Suspended trooper Gary S. Herman, 45, of Chester, left federal court last week.

By [Matt Rocheleau](#)

GLOBE STAFF JULY 02, 2018

Three Massachusetts State Police troopers received an unwelcome surprise last Wednesday morning, when FBI officials showed up on their doorsteps to [arrest them](#) on federal embezzlement charges.

But two of those troopers can expect a much more pleasant sight any day now: state pension checks.

At least 17 troopers linked to overtime abuse and under suspicion for payroll fraud have retired in recent

months, locking in generous pensions and cashing out unused benefits and perks.

ADVERTISEMENT



The pension payouts approved to date range from \$68,000 to \$105,000 per year. And with dozens of troopers under investigation, more may race to retirement.

Get **Metro Headlines** in your inbox:

The 10 top local news stories from metro Boston and around New England delivered daily.

Sign Up

Former lieutenant David W. Wilson and former trooper Paul E. Cesan, both of whom were arrested and charged with embezzlement Wednesday in federal court, retired in March and had their pension applications processed in recent weeks.

The first payments went out Friday, according to a spokeswoman for the state retirement board, which administers pensions. Those checks will contain an especially large lump sum, retroactive to their March retirements.

Wilson, 57, of Charlton, was on the force for more than 31 years and is set to receive \$8,791 per month, or about \$105,490 annually.

Cesan, 50, of Southwick, spent about 24 years with the State

RELATED LINKS



3 Mass. state troopers arrested by federal authorities in overtime fraud probe

Federal authorities have arrested three State Police troopers, two recently retired and one currently suspended, amid an ongoing probe into alleged overtime fraud.

Police and is in line for \$6,639 per month, or about \$79,670 a year.

ADVERTISEMENT



State Police members, a special class under state pension law, can retire and start collecting once they have at least 20 years of service, no matter their age.

Trooper pensions are based on base pay — not overtime or detail work — and the thousands of dollars they claimed in allegedly phony overtime won't factor into their upcoming payouts.

Wilson, who earned nearly \$260,000, including \$103,000 in overtime during 2016, allegedly stole \$12,450 that year in overtime, according to federal prosecutors.

Cesan earned \$163,500, including \$50,800 in overtime in 2016. He allegedly embezzled \$29,287 in overtime.

Federal prosecutors said the theft figures are conservative calculations and cover only one year. If convicted, they face up to 10 years in prison and a \$250,000 fine, but also the potential loss of their pensions.

ADVERTISEMENT



The state retirement board can move to halt pension payments for former state employees convicted of crimes related to their employment. The board also can force them to repay benefits they've already received if they exceed the amount they contributed to their pensions during their careers.

State officials said they weren't sure how many times the board has gone after already-paid pension benefits, but noted such cases are rare.

Absent a conviction, pension payments continue to flow.

Governor Charlie Baker has said he wants the board to be aggressive in going after the pensions of convicted troopers.

“If it’s up to me, I’d take it away — period,” Baker told reporters in April. “As far as I’m concerned, that’s stealing. And no one who sits in one of these public positions should steal — period. You learn that when you’re in second grade. What we’re talking about here is sworn officers of the law.”

Legal experts said that these troopers, if convicted, would appear to be ripe candidates to lose their pensions.

“Right now, it seems like very damning evidence that could result readily in the forfeiture,” said Boston attorney Walter M. Foster, who specializes in state pension law.

However, courtroom veterans noted, it’s no slam-dunk.

For one, troopers can keep their pensions under certain deals with prosecutors, in exchange for pleading guilty and agreeing to other penalties.

What’s more, if any troopers are convicted and the state moves to strip their pensions, they would be able to appeal.

“There’s a number of legal arguments that could be raised,” Foster said.

Troopers could argue that being forced to surrender their pensions violates the Eighth Amendment because it’s too harsh a penalty in light of the underlying crime.

Lawyers successfully made that argument in Massachusetts just [two years ago](#) in the case of retired Peabody police lieutenant Edward A. Bettencourt.

Bettencourt was convicted of a job-related offense — unauthorized use of a computer system for logging on to a state database to check civil service scores of 21 officers — and the state moved to strip his pension.

But the Supreme Judicial Court ruled that rescinding his pension, which it pegged as being worth up to \$1.4 million, violated his rights under the Eighth Amendment ban on excessive fines.

Still, it’s hard to tell if that would work this time.

It’s a fairly new argument in the world of pension forfeitures, said Quincy-based attorney Brian P. Fox. “There’s not a lot of law on it.”

There’s also a section in Massachusetts law that gives the state retirement board discretion to allow people convicted of misappropriating government funds to remain eligible for their pensions so long as they pay back the misappropriated money.

A few criminal retirees have managed to keep public pensions by arguing their crimes weren’t related to their jobs. Former state senator James Marzilli, who was convicted of accosting four women, and Thomas Scully, a Beverly library worker who pleaded guilty to possession of child pornography, won Supreme Judicial Court rulings.

Meanwhile, former House speaker Salvatore F. DiMasi, convicted on corruption charges in 2011, received a favorable SJC ruling in 2016 that allowed him to keep the money he paid into his pension during his career.

Certainly, State Police troopers are examining their options. About 40 current or recently retired troopers are under investigation for overtime fraud.

At least 17 retirees received additional lump sum payouts for unused vacation and sick time, ranging from about \$7,600 to \$80,000.

All of those who did not retire have been suspended without pay, including the third trooper arrested Wednesday, Gary S. Herman, 45, of Chester.

Kay Lazar, Shelley Murphy, Andrea Estes, and Todd Wallack of the Globe staff and Globe correspondent Matt Stout contributed to this report. Matt Rocheleau can be reached at

matthew.rocheleau@globe.com. Follow him on Twitter [@mrochele](#).

Show 287 Comments

SPONSORED BY ALLWAYS HEALTH PARTNERS



Health Insurance 101: The Four Terms You Need to Know

By AllWays Health Partners - Here's a helpful guide to the terms for costs you may encounter as you receive care. [More](#)

Top 10 Trending Articles

Viewed

Commented

Shared

People in open-concept homes are realizing the walls were there for a reason

Ideas | Linda Rodriguez McRobbie: Too old to be president? Science says yes.

Mass. authorities face steep hurdles in shutting down sex trafficking

The backyard mechanic who is taking on Tesla

Road to Recovery: Drugs took their children, but not their hope that others might be saved

Julia Ruth Stevens, Babe Ruth's last surviving child, dies at 102

'SNL' tackles R. Kelly sex assault accusations with parody of CBS interview, Pete Davidson monologue

Yvonne Abraham | Recycling can't fix what really ails us

Six things to know about Michael Bennett, the newest Patriot

Patriots could be diving into the quarterback market

Here's what you need to know about the Ilhan Omar controversy

Imprisoned mobster Carmine 'The Snake' Persico dead at age 85

Governor Baker seeks big real estate sales tax hike to fund climate programs

The guy I was dating proposed — to someone else

Red Sox living legend Carl Yastrzemski remains a grand figure

Toxic chemicals threaten water supply

Boston high schools should adopt state course recommendations

Opinion | Stephen Kinzer: We're edging closer to nuclear war

There's a disturbing new theory about what happened to Malaysia Airlines Flight 370

[Turbulence injures 30 on flight from Istanbul to New York](#)

[Sex trafficking is in plain sight in Massachusetts communities](#)

[First lady has a growing ease in her official role, but not politics](#)

[At SXSW, Elizabeth Warren defends call for breaking up tech giants](#)

[New Orleans Saints fans need to get a grip](#)

[As UMass makes a big bet on online education, rivals offer words of caution](#)

[Trump will seek more money for border wall](#)

[Drugs took their children but not their hope: That others might be saved](#)

[Kyrie Irving, Celtics finish off Lakers this time](#)

[Baseball News, Scores, Analysis, Schedules & More](#)

[Centrists squirm as 2020 Democrats swerve left](#)

[Most Popular In Metro](#) →

Subscribe Now

[Digital Access](#)

[Home Delivery](#)

[Gift Subscriptions](#)

My Account

[Manage my Account](#)

[Mobile Customer Service](#)

[Sign Up For Newsletters](#)

Contact

[Help](#)

[FAQs](#)

[Globe newsroom](#)

[Advertise](#)

[Order back issues](#)

Social

[Facebook](#)

[Twitter](#)

[Google+](#)

More

[ePaper](#)

[News in Education](#)

[Archives](#)

[Privacy policy](#)

[Terms of service](#)

[Terms of purchase](#)

Work at Boston Globe Media

© 2019 Boston Globe Media Partners, LLC