



Some criminally convicted retirees could keep more of their pensions under new proposal



DAVID L. RYAN/GLOBE STAFF/FILE 2018

State lawmakers are pursuing widespread changes to the state's pension laws that could allow former public employees to keep a portion of their taxpayer-funded benefits even after they have been convicted of job-related crimes.

By Matt Stout

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State lawmakers are pursuing widespread changes to the state's pension laws that could allow former public employees to keep a portion of their taxpayer-funded benefits even after they have been convicted of job-related crimes.

Spurred by a series of controversial high court decisions, the proposal has won the approval of a key legislative committee, and, if passed and signed into law, it would mark a dramatic change to how each

of the state's 100-plus public retirement systems handles benefits of criminally convicted retirees. At its core, the bill would end the state's "all-or-nothing" approach to pension forfeiture in which any former public employee convicted of a crime "applicable to his office or position," including misdemeanors, automatically loses his or her entire pension.

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In its place, the legislation would create a tiered system, allowing public retirement boards to cut a former employee's benefits entirely or in three other ways: by two-thirds, one-third, or to a "minimum allowance," defined as being equal to the amount a worker would otherwise receive if he or she retired at 55 years old with 10 years of service.

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A retirement board would have to weigh a series of factors before deciding, including the severity of the crime, and while the option to strip a retiree of his or her full pension remains, a board would need a recommendation from the prosecuting attorney in the criminal case to do so, according to the bill's authors.

The legislation would also make only those convicted of felonies subject to losing their benefits, and would include possession of child pornography and a range of other "sexually violent" offenses among those convictions that potentially trigger pension forfeiture for

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teachers and those who work with children.

The bill, which the Legislature's Joint Committee on Public Service is recommending for passage,

comes amid a time of heightened scrutiny on the pensions of several state troopers linked to overtime abuse. At least 17 troopers under suspicion for payroll fraud [have retired in recent months](#), and Governor Charlie Baker has publicly pushed the State Retirement Board to aggressively go after the pensions of any who are criminally convicted.

State Senator Paul R. Feeney, who cochairs the Committee on Public Service, said discussions on the bill started long before any of the alleged offenses involving the State Police became public. The bill, he said, is intended to give retirement officials a menu of options so "they can impose a penalty that fits the offense."

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"The public trust is sacred," the Foxborough Democrat said. "And any time an employee of the Commonwealth is convicted of a crime in which they're stealing from the taxpayers, then the prosecutors should absolutely, unequivocally, have the option to commence full forfeiture. And that remains the case with this bill."

House Speaker Robert A. DeLeo is still reviewing the legislation, according to his office.

The proposal is rooted in recommendations from a special commission the Legislature created after a [controversial 2016 Supreme Judicial Court decision](#). The court ruled that stripping a retired Peabody police lieutenant of his pension for a conviction of a job-related misdemeanor violated his rights under the Eighth Amendment ban on excessive fines.

Retired Lieutenant Edward A. Bettencourt had originally lost his benefits because he was convicted of using a computer system without authorization to log on to a state database to check civil service scores of 21 officers.

In reversing the decision on his pension, which could be worth up to \$1.4 million, the SJC suggested the Legislature “establish a wholly different forfeiture system” to avoid future excessive fines.

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At the time, DeLeo said he would take the court’s suggestion “very seriously,” and lawmakers that year created the Special Commission on Pension Forfeiture.

The bill adopts several of the commission’s proposals, but with a big caveat: The panel called for eliminating so-called total forfeiture. In other words, those convicted of a job-related crime could keep at least some of their benefits.

The recommendation [frustrated some local retirement officials](#), and lawmakers ultimately kept open the possibility of a worker losing his or her entire pension, provided it “shall be consistent” with a recommendation from the prosecuting agency.

“Based upon the SJC’s decision in the Bettencourt case, the Public Service Committee worked to balance the constitutional rights of those facing a pension forfeiture with the need to properly punish those who commit wrongdoing while serving as a public employee,” Jerald A. Parisella, the other cochair of the Committee on Public Service, said in a statement. “We recognized the need for full forfeiture in certain situations.”

But some say the changes and increased latitude could also prompt conflicting decisions, in which two retirement boards weighing similar circumstances could impose disparate penalties on different cases.

“Clearly it’s softening [the law] because of the tiered system,” said attorney Michael Sacco, who represents retirement boards in pension disputes. “Given my experience with the retirement boards I represent, I have no doubt that they will fulfill their obligations faithfully and to the letter of the law. But what exactly [is] the letter of the law could now be subject to a wide range of discretion.

“It will ultimately, and inevitably, result in inequitable administration of the statute for similarly situated individuals that are convicted of crimes.”

The Massachusetts Teachers Retirement System said it supports the bill’s language reflected in legislation it has pushed since 2015 to strip teachers convicted of child pornography charges of their pensions. It stems from a 2014 high-court decision [involving Ronald T. Garney](#), a retired ninth-grade science teacher who was allowed to keep his benefits.

“Teachers have professional standards and they have a special obligation to protect children and act only in their best interests,” said Erika M. Glaster, executive director of the retirement system. “The Garney decision was a well-written decision that brought home that we needed to seek a legislative amendment.”

Matt Rocheleau of the Globe staff contributed to this report. Matt Stout can be reached at matt.stout@globe.com. Follow him on Twitter [@mattpstout](#).

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