COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

NORFOLK, SS. NO. SJC-13646

GREGORY RAFTERY,
Plaintiff-Appellant,

v.

STATE BOARD OF RETIREMENT,
Defendant-Appellee,

ON RESERVATION AND REPORT FROM THE
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

BRIEF OF THE APPELLEE STATE BOARD OF RETIREMENT

ANDREA JOY CAMPBELL
Attorney General
Katherine M. Fahey, BBO # 699003
Assistant Attorney General
Government Bureau
One Ashburton Place
Boston, Massachusetts 02108
(617) 963-2078
email: Katherine.Fahey@mass.gov

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QUESTIONS PRESENTED

1. Is the forfeiture of Appellant Gregory Raftery's retirement allowance grossly disproportional to the gravity of his offense so as to violate the Excessive Fines Clause of the Eighth Amendment under the standard applied by this Court in Public Employee Retirement Administration Commission v. Bettencourt, 474 Mass. 60 (2016)?
2. Should this Court adopt a different standard of constitutionality from that set forth in Bettencourt for forfeitures under G.L. c. 32, § 15(4), under either the Excessive Fines or the Cruel or Unusual Punishments Clause of Article 26 of the Massachusetts Declaration of Rights?

STATEMENT OF THE CASE

Nature of the Case

This is an action in the nature of certiorari under G.L. c. 249, § 4, brought by Plaintiff Gregory Raftery to challenge a decision by the Dedham District Court (Byrne, J.) ("District Court") concluding that the State Board of Retirement ("Board") had not erred in forfeiting Raftery's retirement allowance under G.L. c. 32, § 15(4), and that such forfeiture did not violate Raftery's constitutional rights.

Statement of Facts and Prior Proceedings

1. Raftery's Crime, Conviction, and Sentencing

Raftery began working as a trooper for the Massachusetts State Police ("MSP") on March 28, 1996, and remained with the MSP until he retired on March 28, 2018. FF.1, Add.58.[1] On November 1, 1996, Raftery took an oath to "honestly and faithfully" serve the Commonwealth of Massachusetts, to "faithfully perform" his duties, and to "submit to any penalties, fines or forfeitures imposed in accordance with the rules and regulations of the [MSP]." FF.2, Add.58; G.L. c. 22C, § 15.

Under MSP's Rules of Conduct, Raftery was required to conduct himself "at all times in such a manner as to reflect most favorably on the [MSP]." RA.226-27. He was prohibited from engaging in conduct that would bring "disrepute or [] discredit upon" the MSP, or that would "impair[] [MSP's or the trooper's] operation, efficiency, or effectiveness[.]" Id.

[1] Citations to the District Court's decision in this brief will be to "FF.[finding number(s)]" if to a particular finding of fact, "CL.[conclusion number(s)]" if to a particular ruling/conclusion of law, and otherwise to "Decision.[page(s)]," with a parallel citation to the page(s) of the Addendum where the cited portion of the decision appears. Citations to the Record Appendix filed by Petitioner on October 25, 2024, will appear as "RA.[page number]." Citations to Petitioner's Corrected Brief, filed on October 31, 2024, appear as "Br.[page number]."

During 2015 and 2016, Raftery was assigned as a uniformed trooper to Troop E of the MSP, which was responsible for enforcing criminal laws and traffic regulations on the Massachusetts Turnpike ("Turnpike"). FF.4, Add.58; RA.227. In addition to earning a salary for their regular 8-hour work shifts, troopers within Troop E were also eligible to earn hourly overtime pay equivalent to 1.5 times their regular hourly pay by signing up for and working additional hours for two MSP initiatives, the Accident Injury Reduction Effort ("AIRE") program and the similar "X-Team" program. FF.5, Add.58-59; RA.227-28. AIRE Program overtime shifts were four hours long, and X-Team overtime shifts were eight hours long. FF.6, Add.59; RA.80-81, 227-28.

The objectives of the AIRE and X-Team programs were to reduce motor vehicle accidents through an enhanced presence of troopers patrolling the Turnpike, and to target individuals who were speeding or engaging in other reckless or aggressive driving. FF.6, Add.59; RA.80-81, 227-28. Both the AIRE and X-Team programs were funded by the Massachusetts Department of Transportation ("MassDOT"), which paid the MSP for the invoices submitted for services rendered, including overtime shifts. FF.8, Add.59-60; RA.228. The MassDOT, in turn, received funding for these initiatives from the United States Department of Transportation ("U.S. DOT"), which annually provides hundreds of

thousands of dollars in funding to state and local law enforcement agencies. FF.8, Add.59-60; RA.80-81, 228.

As part of their AIRE and X-Team overtime duties, troopers regularly issued traffic citations to drivers who had violated the motor vehicle laws.[2] FF.7, Add.59; RA.81. In issuing a citation, troopers were required to complete the appropriate sections of the traffic citation, including the identity of the motorist and vehicle, as well as the date, time, and place of the traffic violation, and to do so accurately. FF.7, Add.59; RA.81, 227. AIRE and X-Team overtime rules then required troopers to forward issued citations to the officer in charge, along with all the required paperwork needed to process them through the Registry of Motor Vehicles, the state court system, and the MSP. FF.7, Add.59; RA.81-82, 227. Citations typically are composed of multiple duplicate carbon copies. See G.L. c. 90C, § 2 (requiring multiple copies for all motor vehicle citations issued and that the issuing officer certify that a copy has been given to the violator).

As part of an investigation, federal law enforcement discovered Raftery was engaged in a two-year long scheme to embezzle government funds and cover up that scheme in connection with his involvement in the AIRE and X-Team

[2] Troopers also were expected to investigate and handle any other situations they encountered, such as the commission of other criminal offenses or medical emergencies.

programs. FF.9, Add.60. During 2015 and 2016, cruisers assigned to MSP troopers were equipped with computers that allowed the troopers to access relevant records, such as driver records and vehicle registrations. RA.82, 228. The MSP also maintained and recorded radio transmission data pertaining to the cruisers that showed: (i) when a cruiser was turned on, and (ii) the general location of the cruiser. RA.83, 228. Based on this data and other MSP records, federal agents determined that, during 2015 and 2016, Raftery frequently failed to work entire 4-hour AIRE overtime shifts or 8-hour X-Team overtime shifts that he had been assigned but nonetheless submitted proof of that work in order to seek payment. RA.84-85, 228-229; FF.9, Add.60. In some cases, Raftery left his assignment up to seven hours early, and in others, Raftery collected overtime pay without ever showing up for a given shift. FF.9, Add.60; RA.85-86.

Raftery later admitted that he engaged in numerous instances of such misconduct, specifically:

- Of the 100 AIRE overtime shifts (400 hours) worked in 2015, he was not present and not working for 287 hours of those shifts;
- Of the 150 AIRE overtime shifts (600 hours) worked in 2016, he was not present and not working for 397 hours of those shifts;

- Of the seven X-Team overtime shifts (56 hours) worked in 2015, he was not present and not working for 42 hours of those shifts;
- For the one X-Team overtime shift worked in 2016 (8 hours), he was not present and not working for 3.75 hours of that shift.

RA.84-89, 228-229.

Raftery received a total of $51,337.50 in payments from the MSP for a total of 729 hours (at a rate of $75 per hour) for work that he never performed. FF.10, Add.60; RA.229. Raftery took steps to conceal this scheme by internally submitting to the MSP copies of citations pertaining to non-existent misconduct by drivers. FF.11, Add.60; RA.85, 229. Raftery destroyed or discarded the duplicate copies of these citations that should have been provided to MSP court officers, the RMV, and the drivers themselves. FF.11, Add.60; RA.85, 229. Nonetheless, Raftery's false traffic citations, putatively issued to individual motorists, were maintained as records at the MSP. For instance, on October 13, 2016, MSP payroll records showed that Raftery worked his regular shift from 7:00 a.m. to 11:00 a.m., then worked a special detail from 11:00 a.m. to 3:30 p.m. (unrelated to the AIRE and X-Team programs), and then had signed up for an AIRE shift from 7:00 p.m. to 11:00 p.m. RA.85-86. During the time that he was getting paid for the detail, from 1:45 p.m. to 2:00 p.m., he accessed RMV records for eight motorists. Id.

Then, on his AIRE Activity Sheet (on which Raftery falsely reported he worked an AIRE shift from 7:00 p.m. to 11:00 p.m.), he reported that he had issued traffic citations to the same eight motorists from 6:58 p.m. to 7:50 p.m. Id. RMV records, however, showed that none of these motorists actually received traffic citations on October 13, 2016. Id. In addition, Raftery's cruiser radio data showed that his cruiser was turned on during his regular shift, at 7:22 a.m., and was then turned off at 2:47 p.m., 45 minutes before he claimed to have left the detail. His cruiser was not turned back on until 7:45 a.m. the following day. Id.

On June 26, 2018, the United States Attorney for the District of Massachusetts filed a felony information ("Information") against Raftery in U.S. District Court for the District of Massachusetts, charging Raftery with embezzling from an agency receiving federal funds in violation of 18 U.S.C. § 666(a)(1)(A). FF.12, Add.60; RA.41-47. The Information alleged that Raftery "embezzled, stole, [and] obtained by fraud . . . property valued at $5,000 or more . . . that was owned by . . . the MSP, [which] received in excess of $10,000 in federal program benefits, funded by [U.S.] DOT . . . between in or about January 2015 and in or about December 2016." RA.41-47.

In connection with the charges laid out in the Information, Raftery and the U.S. Attorney's Office entered into a plea agreement. FF.13, Add.13; RA.50-58.

In the plea agreement, the parties stipulated that, under the Federal Sentencing Guidelines,[3] Raftery's total offense level calculation should be increased by two levels to reflect that the offense "involved sophisticated means and [Raftery] had intentionally engaged in or caused the conduct constituting sophisticated means," and another two levels because Raftery "abused a position of public trust." RA.51. It was also agreed that Raftery's offense level should be increased by six levels "because the loss amount [was] greater than $40,000 but less than $95,000." Id.

On July 2, 2018, consistent with the terms of the plea agreement, Raftery entered a plea of guilty to the Information and waived indictment at a hearing before U.S. District Judge William G. Young. FF.13, 14, Add.61; RA.59, 60-96. On March 26, 2019, Judge Young sentenced Raftery to three months in prison, one year of supervised release thereafter, and imposed restitution in the amount of $51,337.50, and a mandatory special assessment of $100. FF.15, Add.61; RA.104-120.[4] A violation of 18 U.S.C. § 666(a)(1)(A) carried the following maximum

[3] The Federal Sentencing Guidelines prepared by the United States Sentencing Commission are advisory in nature. See United States v. Booker, 543 U.S. 220 (2005).

[4] In imposing the sentence, Judge Young observed that "the crime here was so extensive, so sophisticated, motivated by nothing but greed, that it is the view of this Court that you must spend a short period in prison." RA.113. Judge Young

(footnote continued)

penalties: up to ten years of incarceration; three years of supervised release; a maximum fine of $250,000, or twice the gross gain/loss stemming from the offense, whichever is greater; a mandatory special assessment of $100; restitution and/or forfeiture to the extent charged in the Information. FF.16, Add.61; RA.50; 18 U.S.C. § 666; 18 U.S.C. § 3571.

2. The State Board of Retirement's Decision

When Raftery retired, on March 22, 2018, at age 47, he had 21 years, nine months, and 25 days of creditable service. FF.3, Add.58; RA.230. On March 29, 2019—three days after Raftery was sentenced—the Board voted pursuant to G.L. c. 32, § 15, to suspend the retirement allowance that Raftery was then receiving and to convene a hearing to determine Raftery's rights going forward. FF.18, Add.62; RA.223. At that point, Raftery had received $73,951.73 gross in retirement benefits. RA.231. In August 2019, the Board held a hearing at which both Raftery and the Board, each represented by counsel, presented argument and

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also described the conduct at issue as "utterly corrupt," and "blatantly fraudulent and illegal." RA.269, 272.

documentary evidence in the form of twenty-one exhibits to a hearing officer. FF.19, Add.62; RA.223-39.[5]

On March 24, 2022, the Board's Hearing Officer issued Recommended Findings and Decision, recommending that because Raftery had been "convicted of criminal offenses involving violations of law applicable to his office or position," his retirement allowance was required to be forfeited under G.L. c. 32, § 15(4).[6] AR.222-239.

The Hearing Officer found, and Raftery does not dispute, that the present value of Raftery's future retirement allowance was $1,025,000. AR.231; see also FF.3, 20, Add.58, 62. The Hearing Officer further recommended that, because Raftery had begun to receive a retirement allowance (in 2018) after committing the

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[5] Raftery attended and testified solely to the question of his date of birth. No other witnesses testified. RA.224.

[6] G.L. c. 32, § 15(4) provides:

> In no event shall any member after final conviction of a criminal offense involving violation of the laws applicable to his office or position, be entitled to receive a retirement allowance under the provisions of section one to twenty-eight, inclusive, nor shall any beneficiary be entitled to receive any benefits under such provisions on account of such member. The said member or his beneficiary shall receive, unless otherwise prohibited by law, a return of his accumulated total deductions; provided, however, that the rate of regular interest for the purpose of calculating accumulated total deductions shall be zero.

criminal offenses (in 2015 and 2016), he would be required under G.L. c. 32, § 15(6), to return any benefits paid, less any contributions that he made during his employ. AR.237.[7] Subsequently, the Board voted to adopt the Hearing Officer's Recommended Findings and Decision (hereafter referred to as the "Board Decision"), and the Board notified Raftery of its Decision on May 11, 2022. FF.21, 22, Add.61-62; AR.240-244.

3. The District Court's Decision

Raftery timely sought judicial review in the District Court under G.L. c. 32, § 16(3). Following cross-motions for judgment on an agreed-upon record, argument by counsel, and the submission of proposed findings of fact and conclusions of law by each party, the District Court issued a decision affirming the Board Decision on April 16, 2024. Decision, Add.50-77.

The District Court held that the forfeiture of Raftery's retirement allowance "is not grossly disproportionate to the gravity of his offense and within constitutional proportionality limits under both the Eighth Amendment and Article

[7] The Hearing Officer did not consider Raftery's argument before the Board that the forfeiture would be an "excessive fine" under the Eighth Amendment to the U.S. Constitution and Article 26 of the Massachusetts Declaration of Rights, observing that such questions were beyond the Board's authority. FF.21, Add.62-63; AR.237-38 (citing Maher v. Justices of Quincy Div. of Dist. Ct. Dep't, 67 Mass. App. Ct. 612, 619 (2006)).

26." CL.62, Add.75. In reaching this conclusion, the District Court agreed with Raftery that the Excessive Fines Clause of Article 26 was implicated by pension forfeiture just as the Eighth Amendment is, CL.43, Add.69, but rejected his contention that an "excessive fine" under Article 26 should be interpreted to have a different meaning than an "excessive fine" under the Eighth Amendment, CL.44, Add.69-70.[8] The District Court also rejected Raftery's argument that the Article 26's "Cruel or Unusual Punishments" clause should apply to pension forfeiture. Decision.14-15, Add.65-66.[9]

In considering Raftery's challenge to his forfeiture as excessive under both the Eighth Amendment and Article 26, the District Court assessed whether the

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[8] Specifically, the District Court concluded that the "minor differences in language and structure" between Article 26 and the Eighth Amendment do not provide "additional constitutional protection" or mandate "consideration of different factors" than those discussed in caselaw interpreting the Excessive Fines Clause of the Eighth Amendment; "both constitutional provisions were adopted close in time and were intended to provide the same type of protection from excessive fines for the same historical reasons." CL.44, Add.69-70 (citation omitted).

[9] The District Court reasoned that Raftery's argument found no support in the case law he offered, where cruel and/or unusual punishment was, as the Supreme Court put it, concerned not with property forfeiture but with the "duration or conditions of confinement[,]" and, the "disparity in the proportionality standard applied under the excessive fines clause with that of the cruel or unusual provision of Art. 26"… "suggests that the cruel or unusual clause of Art. 26 has application to a category of matters other than pension forfeiture." CL.35, Add.65-66 (internal quotations omitted).

amount of the forfeiture was grossly disproportional to the gravity of the offense under the factors set forth in this Court's decision in Public Employee Retirement Administration Commission v. Bettencourt, 474 Mass. 60 (2016). In terms of the amount of the forfeiture, the court found the present value of Raftery's future pension benefits to be $1,025,000. FF.3, Add.59. The court also considered "significant" Raftery's loss of future health insurance benefits (which are subsidized in part by the Commonwealth for retirees), but also found it could not quantify the amount of that loss. FF.3, Add.59.

With regard to the countervailing factors under Bettencourt regarding the gravity of the offense, the court recited them as: (1) the nature and circumstances of the offense; (2) whether the offense was related to any other illegal activities; (3) the maximum potential penalty for the crime that could have been imposed; and (4) the harm resulting from the offense. CL.48, Add.70 (citing Bettencourt, 474 Mass. at 72).

With regard to the nature and circumstances of the offense, the District Court found that Raftery engaged in a scheme of fraud and embezzlement that he committed repeatedly over two years and that he stole $51,337 in overtime pay for hours that he did not work. The District Court rejected any assertion by Raftery that his crimes were mere "time and attendance" violations, pointing to Raftery's

efforts to conceal his conduct through the creation and submission of fraudulent speeding and other traffic citations. CL.53-54, Add.72. With regard to the maximum potential penalty,[10] the District Court noted that the maximum sentence for a violation of 18 U.S.C. § 666(a)(1)(A) is ten years in prison, three years supervised release, a maximum fine of $250,000 or twice the gross gains/loss from the offense, whichever is greater, a mandatory special assessment of $100, and restitution and forfeiture to the extent charged in the indictment or information. CL.56, Add.73. Finally, with regard to the harm resulting from the offense, the District Court found that Raftery "engaged in the fraud when he was supposed to be enforcing the law – thus depriving the Commonwealth of service intended to increase public safety. Further, Raftery's behavior eroded public trust in the MSP and law enforcement in general." CL.58, Add.73 (citations omitted). Raftery "intentionally and willingly engaged in a scheme to acquire pay without working and to cover up his conduct[.]" CL.60, Add.73-74.

[10] The District Court determined that there was no evidence that Raftery's "convicted conduct relates to any other individual wrongdoing" and that he had no prior convictions. Although the Court did not apply the factor concerning whether the offense was related to any other illegal activities, CL.55, Add.72-73, as this Court pointed out in MacLean v. State Board of Retirement, 432 Mass. 339, 349 (2000), "[t]here were multiple illegal activities triggering the forfeiture, not a single minor violation, and the offenses occurred over a period of time."

The Court thus concluded that the amount to be forfeited was not grossly disproportional to the gravity of Raftery's underlying offense, and therefore held that the forfeiture of his pension and associated benefits was appropriate.

Raftery now seeks review of the District Court's decision pursuant to G.L. c. 249, § 4.

SUMMARY OF THE ARGUMENT

The District Court decision should be affirmed because Raftery has not shown the forfeiture of his retirement allowance was grossly disproportional to the gravity of his offense under the Excessive Fines Clause of either the Eighth Amendment or Article 26.

First, the forfeiture at issue is not grossly disproportional to the gravity of Raftery's offense under the factors set forth in Public Employee Retirement Administration Commission v. Bettencourt, 474 Mass. 60 (2016), and therefore does not violate the Excessive Fines Clause of the Eighth Amendment.

Second, this Court should decline to adopt a different standard of constitutionality for pension forfeiture under Article 26 of the Declaration of Rights. As an initial matter, this Court should reject the application of the Cruel or Unusual Punishments Clause to pension forfeiture as entirely unsupported by any case law or by the historical context Raftery offers. In the alternative, the Court

need not reach this issue where Raftery has not demonstrated his forfeiture is "cruel or unusual" under the test this Court has articulated. Instead, this Court should evaluate pension forfeiture under the Excessive Fines Clause of Article 26, applying the standard articulated in Bettencourt, where the standard already achieves the aims of proportionality at the heart of not only the Eighth Amendment but also Article 26 and excessiveness of pension forfeiture has been repeatedly assessed by this Court and lower courts. Moreover, Raftery has not articulated any persuasive basis for a more expansive test, and, in any event, a more expansive test would not appear to benefit Raftery.

ARGUMENT

I. Standard of Review

G.L. c. 249, § 4, provides a mechanism for limited judicial review to "correct errors of law in administrative proceedings where judicial review is otherwise unavailable." Essex Regional Ret. Bd. v. Swallow, 481 Mass. 241, 245 (2019) (quotations omitted). This Court corrects only substantial errors of law, "which adversely affects a material right of the plaintiff" and only rectifies those errors that "have resulted in manifest injustice to the plaintiff or which have adversely affected the real interests of the general public." State Bd. of Ret. v. Finneran, 476 Mass. 714, 719 (2017) (quotations omitted).

This Court reviews the District Court's determination of excessiveness de novo. Maher v. Retirement Bd. of Quincy, 452 Mass. 517, 523 (2008).

II. The Forfeiture at Issue Is Not "Grossly Disproportional" to the Offense Under the Bettencourt Factors.

The District Court properly concluded that the forfeiture at issue is constitutional under the Eighth Amendment to the U.S. Constitution. (Indeed, Raftery mounts no argument contesting the District Court's application of the Eighth Amendment's Excessive Fines clause to his case.[11]) Under this Court's

[11] Raftery does take issue with the District Court's finding that the offense here was not ordinary "time and attendance fraud." CL.61, Add.74 ("If this were strictly a 'time and attendance' case, as Defendant [Raftery] suggests, then this Court would be inclined to view the need for forfeiture differently….But it is not."). Raftery contends this was error because "citations written by Raftery provided to the [MSP] were an integral part of his false or fraudulent claim for payment which constituted his offense." Br.46. As an initial matter, the Court's finding that this is not "strictly a 'time and attendance' case," is a finding of fact. Where a district court judge made findings of fact, they "must be accepted unless clearly erroneous." Bisignani v. Justices of Lynn Div. of District Ct. Dep't of Trial Ct., 100 Mass. App. Ct. 618, 621 (2022) (quoting Bettencourt, 474 Mass. at 72 n.19). Given the undisputed facts on which this finding relies, i.e., that Raftery was federally prosecuted for embezzlement and Raftery knowingly and voluntarily pleaded to that charge, Raftery cannot establish that this finding is clearly erroneous.

Further, Raftery suggests that, were the Court to think of this as mere "time and attendance" fraud akin to certain non-criminal state offenses (such as a violation of the state's conflict-of-interest statute, G.L. c. 268A), it would impact the Excessive Fines analysis under Article 26. Br.45-46. Nothing in the pension forfeiture statute, the Eighth Amendment, Article 26, or this Court's decisions, however,

(footnote continued)

decision in Public Employee Retirement Administration Commission v. Bettencourt, 474 Mass. 60 (2016), the forfeiture of a public pension pursuant to G.L. c. 32, § 15(4), is a "fine" within the meaning of the "Excessive Fines" Clause of the Eighth Amendment. 474 Mass. at 71; see also Alexander v. United States, 509 U.S. 544, 558 (1993) (foreclosing challenges to property forfeiture under the "Cruel and Unusual Punishments Clause" because the Clause is "concerned with matters such as the duration or conditions of confinement[.]"). In determining whether forfeiture of a public pension is excessive under the Eighth Amendment, "'[t]he touchstone of the constitutional inquiry . . . is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish.'" Bettencourt, 474 Mass. at 72 (quoting United States v. Bajakajian, 524 U.S. 321, 334 (1998)). In conducting that inquiry, this Court "compare[s] the forfeiture amount to that offense, and '[i]f the amount of the forfeiture is grossly disproportional to the gravity of the defendant's offense, it is unconstitutional.'" Id. (quoting Bajakajian, 524 U.S. at 337). Where a district court judge made findings of fact, they "must 'be accepted

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suggests that federal felony convictions can be transmuted in some way to a far lesser charge for the purposes of analyzing the excessiveness of the forfeiture.

unless clearly erroneous.'" Bisignani, 100 Mass. App. Ct. at 621 (quoting Bettencourt, 474 Mass. at 72 n.19).

This Court has set forth the following factors to determine "the gravity of the offense": (1) the nature and circumstances of the offense; (2) whether the offense was related to any other illegal activities; (3) the maximum potential penalty for the crime that could have been imposed; and (4) the harm resulting from the offense. Bettencourt, 474 Mass. at 72. The circumstances of the defendant, such as his financial situation, are not relevant to this proportionality analysis. See generally Bajakajian, 524 U.S. at 337-341; Bettencourt, 474 Mass. at 72-76.[12]

Here, the District Court properly concluded that the Bettencourt factors support the conclusion that forfeiture is not grossly disproportional to the gravity of Raftery's offense. As to the nature and circumstances of the offense, like the federal sentencing judge, the District Court concluded that Raftery's offense, embezzlement of government funds over the course of two years, was serious.

[12] There is no disagreement that, at the first step of the Bettencourt proportionality analysis, the present value of Raftery's pension is $1,025,000. CL.52, Add.72. Although the District Court noted the loss of Raftery's health insurance was "significant," because Raftery did not submit any evidence on this point, the court did not quantify the amount of this loss. FF.3, Add.59. Finally, Raftery did not claim below that the forfeiture would render him "destitute," given that he is still of working age (he was 47 when he retired from the MSP in 2018, FF.3, Add.59) and is currently employed. See CL.50, Add.71.

CL.60, Add.73-74; see also RA.113, RA.269, 272. As the District Court put it, Raftery not only "intentionally and willingly engaged in a scheme to acquire pay without working" but went further by "purposefully concealing the unworked hours by fraudulently falsifying citations for motor vehicle infractions and driver misconduct which never occurred." CL.60, Add.73-74.

In accordance with this Court's directive that "'the maximum punishment authorized by the Legislature is the determinative factor[,]'" Bettencourt, 474 Mass. at 73 (quoting Maher, 452 Mass. at 524 n.12), the District Court considered the maximum potential penalties that could have been imposed for Raftery's conviction, CL.56, Add.73. The offense to which Raftery pleaded guilty was a felony carrying a maximum sentence of ten years imprisonment; a $250,000 fine or twice the gross gains/losses from the offense, whichever is greater; and a maximum of three years' probation. CL.56, Add.73; 18 U.S.C. § 666; 18 U.S.C. § 3571. Like in State Board of Retirement v. Finneran, 476 Mass. 714 (2017), where the former House speaker was federally convicted for obstruction of justice and forfeited a $433,400[13] pension and faced nearly identical maximum penalties,

[13] Forfeitures of much larger amounts have been affirmed as constitutional. See Bisignani, 100 Mass. App. Ct. at 622-23 (affirming a $1,533,698 forfeiture where criminal misconduct spanned multiple years); Flaherty v. Justices of the Haverhill Div. of the Dist. Ct. Dep't of the Trial Ct., 83 Mass. App. Ct. 120, 23-25 (2013)

(footnote continued)

Raftery's offense and maximum potential penalty stand in "stark contrast," Finneran, 476 Mass. at 724, to the circumstances deemed excessive in Bettencourt. There, the plaintiff was convicted of misdemeanors related to accessing co-workers civil service exam scores on a computer system during a "single shift of duty," where there was no evidence of any gain to the plaintiff from the crimes other than "satisfaction of curiosity," and the crimes amounting to "snooping." 474 Mass. at 72-73.

As to the final factor, harm resulting from the offense, "harm is not limited to the pecuniary gain [Defendant] may have received[.]" Bisignani, 100 Mass. App. Ct. at 625. The District Court held that Raftery stole $51,337 in public funds, (both state and, ultimately, Federal funds). The District Court also, rightfully, concluded that the harm resulting from the offenses included engaging in fraud when he was supposed to be enforcing the law, "depriv[ing] the Commonwealth of service intended to increase public safety," and "erod[ing] public trust in the MSP and law enforcement in general." CL.58, Add.73. Not unlike Bisignani, who, well into a career in public service as a town administrator, engaged in, inter alia, procurement fraud, the crimes here involved a "significant breach of the public

(affirming $940,000 forfeiture following conviction for larceny), cert. denied 571 U.S. 889 (2013). See also MacLean, 432 Mass. at 349 (affirming $625,000 (in 2000 dollars) forfeiture despite disgorgement of ill-gotten gains).

trust, striking at the core of the ethical responsibilities of his position[]." 100 Mass. App. Ct. at 625.

Taken together, as the District Court recognized, the Bettencourt factors reflect that Raftery's forfeiture was not grossly disproportional to the gravity of his offense.[14] This was a "serious" offense, for which Congress imposed serious maximum potential penalties, and the resultant harm is serious, and to some degree, incalculable.

III. This Court Should Reject Raftery's Request to Adopt a Different Standard for Pension Forfeiture Under Article 26 of the State Constitution.

This Court should decline Raftery's invitation to apply the Cruel or Unusual Punishments Clause of Article 26 to pension forfeitures, or alternatively, to create a new test under Article 26's Excessive Fines Clause that goes beyond Bettencourt's "grossly disproportional" test. Raftery's historical arguments are not persuasive, and even if they were, the circumstances of Raftery's crime are such that any plausible test under Article 26 would not assist him.

[14] In Bettencourt, this Court "decline[d] to attempt" to ascertain the permissible "level or amount of forfeiture" where the statutorily-mandated forfeiture was unconstitutional, observing that the selection of a particular methodology for partial forfeiture is one where "questions of policy abound," and that fits "squarely within the legislative, not the judicial, domain." Bettencourt, 474 Mass. at 78.

A. As With the Eighth Amendment, the Cruel or Unusual Punishments Clause of Article 26 Does Not Apply to Pension Forfeiture.

The Eighth Amendment to the U.S. Constitution states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The Supreme Court has held that the primary purpose of the Cruel and Unusual Punishments Clause of the Eighth Amendment "has always been considered, and properly so, to be directed at the method or kind of punishment imposed for the violation of criminal statutes." Ingraham v. Wright, 430 U.S. 651, 667 (1977) (quotations omitted). The Supreme Court has rejected its application in numerous instances "outside the criminal process," id. at 667-68 (citing cases), most notably, to monetary fines, in favor of the application of the Excessive Fines Clause. Specifically, in Alexander v. United States, 509 U.S. 544 (1993), the Supreme Court held that, "[u]nlike the Cruel and Unusual Punishments Clause, which is concerned with matters such as the duration or conditions of confinement, the Excessive Fines Clause limits the Government's power to extract payments as punishment for an offense, and the in personam criminal forfeiture at issue here is clearly a form of monetary punishment no different, for Eighth Amendment purposes, from a traditional 'fine.'" 509 U.S. at 558 (quotations omitted); see also United States v. Austin, 509 U.S. 602 (1993) (applying the

Excessive Fines Clause, not the Cruel and Unusual Punishments Clause, to in rem civil forfeiture), United States v. Bajakajian, 524 U.S. 321 (1998) (applying the Excessive Fines Clause to a civil forfeiture, where it "limits the Government's power to extract payments, whether in cash or in kind, as punishment for some offense." (quotations omitted)).

It is against this backdrop that Raftery contends that Article 26's Cruel or Unusual Punishments Clause is nonetheless applicable to the monetary penalty imposed upon him through the forfeiture of his retirement allowance. Similarly to the Eighth Amendment, Article 26 provides, in relevant part: "No magistrate or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments."

Although Raftery contends that the forfeiture in this case is both "cruel" and "unusual" within the meaning of Article 26, and attempts to invoke various sources including this Court's evolving Article 26 case law to differentiate Article 26 from the Eighth Amendment, Raftery offers nothing to support his position that this Court should conclude what no other court has: the prohibition on "cruel [or/and] unusual punishment" applies to monetary penalties. Simply put, the cruel or unusual punishment language only applies to punishments imposed upon criminal conviction; it does not apply to monetary penalties or to the collateral

consequences of criminal convictions. In the absence of any support for such a result, this Court should decline to expand the Cruel or Unusual Punishments Clause of Article 26 to reach pension forfeiture.

1. Historical context does not support interpreting the Cruel or Unusual Punishment Clause of Article 26 as applying to pension forfeiture.

Raftery points to bits of historical context surrounding the adoption of the Massachusetts and United States Constitutions, but none of it is instructive on the questions before this Court. For instance, Raftery makes much of the disjunctive "or" used by Massachusetts and several other early states, as compared with the "and" used by the Federal Constitution, arguing that states like Massachusetts and North Carolina, influenced by John Adams and like-minded individuals, used the disjunctive "or" to more expansively prohibit penalties that were "excessive" or "cruel" or "unusual." Br.13-16.[15] However, none of the textual distinctions and accompanying history offered suggests that the scope of "punishment" within the

[15] Raftery also points to decisions from newer states with similar constitutional provisions, specifically California and Hawai'i, as supporting a disjunctive reading of "Cruel or Unusual Punishment." See Br.29-32 (discussing People v. Anderson, 6 Cal. 3d 628 (1972)); Br.35-36 (discussing In the Matter of Individuals in the Custody of Hawai'i, 2021 WL 4762901 (Haw. Oct. 12, 2021)). Notably, those decisions pertain to conditions of confinement, not monetary fines. Even if this Court were to expressly adopt the disjunctive reading for which Raftery advocates, he has not explained how such a reading would reach monetary penalties.

meaning of the Declaration of Rights would have been viewed in such a way as to extend to monetary penalties.[16]

Raftery further contends that John Adams (as the author of the Massachusetts Constitution and Declaration of Rights) thought differently about rights and the role of government than James Madison (as the author of the Virginia Plan from which the U.S. Constitution is based) and that Adams was fashioning a social contract between the Commonwealth and its inhabitants, whereas the Eighth Amendment and the Bill of Rights were an "afterthought." Br.14-20.

But one need not speculate about how the diverging philosophies of Madison and Adams more generally impacted the drafting and interpretation of the Clauses at issue where the language is plain. See, e.g., Schulman v. Attorney General, 447 Mass. 189, 191 (2006) (Provision's "words are to be given their natural and obvious sense according to common and approved usage at the time of its adoption, although the historical context should not control the plain meaning of the language"). Article 26, like the Eighth Amendment, imposes three distinct

[16] The extensive discussion Raftery offers about the drafting of various state Constitutions and the U.S. Constitution is devoid of any history of the drafting of the provisions at issue, let alone history to suggest that the framers of the respective provisions fundamentally disagreed about their application of language concerning cruel and unusual punishment to monetary penalties. Br.13-29.

restraints on government action: (i) excessive bail, (ii) excessive fines, and (iii) cruel and/or unusual punishment. And where this Court has already concluded that the Excessive Fines Clause of the Eighth Amendment applies to pension forfeiture,[17] there is no need to hold that the Cruel or Unusual Punishment Clause of Article 26 also applies in some new or different way to pension forfeiture, especially where the cognate provision of the federal constitution has never been applied to a monetary penalty. Cf. McDonald v. City of Chicago, 561 U.S. 742, 758-59 (2010) (declining to apply Privileges or Immunities Clause of Fourteenth Amendment to incorporate Second Amendment to apply to States, where Due Process Clause was already well-established vehicle for incorporation of certain provisions of the Bill of Rights to apply to the States).

2. This Court's Article 26 jurisprudence does not call for an expansion of Article 26's Cruel or Unusual Punishments Clause to pension forfeiture.

Raftery argues that this Court's line of decisions distinguishing Article 26's constitutional protections from the Eighth Amendment, culminating with the recent decision in Commonwealth v. Mattis, 493 Mass. 216 (2024), counsel in favor of a

[17] The Board has no objection to this Court also applying the Excessive Fines Clause of Article 26 to pension forfeiture. But for the reasons set forth below, that analysis should be identical to the Eighth Amendment standard set forth in Bettencourt.

broader interpretation of Article 26 here. Br.32-33, 37. But Raftery is mistaken that Mattis, or the line of cases on which it is based, can be borrowed to fit this context.[18]

First, Mattis, along with Diatchenko v. District Attorney for the Suffolk District, 466 Mass. 655 (2013), and District Attorney for the Suffolk District v. Watson, 381 Mass. 648 (1980), each pertains to the imposition of physical punishment and incarceration, including life sentences and, in the case of Watson, the death penalty. In each of those cases, this Court concluded that Article 26's Cruel or Unusual Punishments Clause prohibited some form of physical punishment that the Eighth Amendment as interpreted by the Supreme Court permitted, because the punishment "is so disproportionate to the crime that it

[18] The Board does not dispute that the overall language of Article 26 differs in some respects from the Eighth Amendment. There may be very good reasons for this Court to interpret Article 26 to be more protective of individual rights than the Supreme Court has done with respect to the Eighth Amendment in other contexts. See, e.g., Mattis, 493 Mass. at 217-18. See generally Kligler v. Attorney Gen., 491 Mass. 38, 59 (2022) ("'Fundamental to the vigor of our Federal system of government is that State courts are absolutely free to interpret State constitutional provisions to accord greater protection to individual rights than do similar provisions of the United States Constitution.'") (quoting Goodridge v. Department of Pub. Health, 440 Mass. 309, 328 (2003)). The Board takes no position on those issues here. Rather, the Board's position is that, in the specific context of pension forfeiture, the protections of Article 26 and the Eighth Amendment should be treated as co-extensive, given how well-developed, familiar, and workable, the Bettencourt Eighth Amendment standard has proven to be in Massachusetts courts.

'shocks the conscience and offends fundamental notions of human dignity.'" Mattis, 493 Mass. at 221 (quoting Diatchenko, 466 Mass. at 669). As the District Court noted, this is an inapt standard for a monetary penalty such as pension forfeiture, CL.35, Add.65-66, and these cases do not suggest otherwise.

Raftery also contends that "just as the age of youthful offenders is a factor" in Mattis, "so too is the effect of pension forfeiture on retirees who are denied the 'blessings of life'" promised in the Declaration of Rights.[19] Br.40-41. This argument conflates cause and effect. In Mattis, for example, this Court concluded that an 18- to 20-year-old could not be sent to prison for life without the possibility of parole, based on the scientific consensus concerning the brains of emerging adults, which could relate to the reasons for their actions. 493 Mass. at 225-226 ("[E]merging adults are … less able to control their impulses in emotionally arousing situations."). That consensus, coupled with contemporary standards of decency that counsel in favor of treating emerging adults differently from older

[19] It is true, of course, that forfeiture of a retirement allowance is likely to more harshly impact older individuals, some of whom may not have the ability to begin retirement savings anew. Observing this potential disproportionate impact on persons later in their working lives, however, is not consistent with the individualized nature of the inquiry into "gross disproportionality" for purposes of the excessive fines clauses. Rather, it is a misplaced argument for the invalidation of all such forfeitures, as imposed by G.L. c. 32, §15(4), and it simply proves too much.

adults, led to the conclusion that imposing life sentences without parole on emerging adults is cruel or unusual punishment in violation of Article 26. Id. at 225-236. Here, by contrast, Raftery, a seasoned law enforcement officer, violated the oaths of his office repeatedly, and engaged in a lengthy embezzlement scheme that included the submission of fraudulent traffic citations over a two-year period to secure over $50,000 in overtime that he did not earn. He does not point to any evolving understanding about the brains of persons in his situation that could help explain why he committed his crime. Nor does he refer to decisions of other states reflecting the fundamental unfairness of forfeiture. And, of course, he is not facing a lengthy incarceration, as was the case in Mattis. The Cruel or Unusual Punishments Clause of Article 26 simply does not reach pension forfeiture.

3. Even if pension forfeiture could be analyzed under the Cruel or Unusual Punishments Clause of Article 26, Raftery's forfeiture was neither "cruel" nor "unusual."

Even assuming the Cruel or Unusual Punishments Clause applies here, Raftery has not shown this forfeiture was a "cruel" or "unusual" punishment within the meaning of Article 26.

As noted above, "[a] punishment is unconstitutional (i.e., cruel or unusual) if it is so disproportionate to the crime that it 'shocks the conscience and offends fundamental notions of human dignity.'" Mattis, 493 Mass. at 221 (quoting

Diatchenko, 466 Mass at 669). "Analysis of disproportionality occurs 'in light of contemporary standards of decency which mark the progress of society.'" Diatchenko, 466 Mass. at 669 (quoting Good v. Commissioner of Correction, 417 Mass. 329, 335 (1994)).[20]

Even assuming Raftery need only show the punishment at issue is either cruel or unusual, Raftery has not demonstrated that the forfeiture is so disproportionate to the underlying crime that it "shocks the conscience and offends fundamental notions of human dignity." Diatchenko, 466 Mass at 669 (quotations omitted). Instead, Raftery contends the forfeiture is cruel where it imposes monetary sanctions on him that will last a lifetime. Br.38. But that is true in most, if not all, cases involving pension forfeiture, so adopting this as a dispositive factor would effectively invalidate pension forfeiture in Massachusetts. Furthermore, a

[20] Raftery contends that, in adopting a disjunctive interpretation of the Cruel or Unusual Punishments Clause, this Court should also fashion an entirely new standard as to what constitutes a "cruel" or "unusual" punishment in favor of a test that enshrines proportionality and eschews the requirement that the punishment imposed "shock the conscience." Br.38-39. Neither the historical context nor textual differences Raftery points to support this result. And, in any event, Raftery ignores that the current test already emphasizes proportionality. Indeed, as Raftery recognizes, it is precisely the standard Raftery asks this Court to abandon that has led this Court to conclude Article 26 prohibits the imposition of life imprisonment without the possibility of parole for juvenile offenders, Diatchenko, 466 Mass. at 669-70, and emerging adults, Mattis, 493 Mass. at 221-224.

result is not cruel in the constitutional sense merely because it has long-lasting impacts. Raftery's felony conviction may carry other long-lasting consequences, but this is the logical consequence that flows from having pleaded guilty to a federal felony.

Raftery also contends that his forfeiture, and the pension forfeiture scheme more broadly, is "unusual" because it has a greater impact than the forfeiture statutes of other states and countries. Br.38. But the fact that Massachusetts may take a different approach to pension forfeiture than some other states is not, without more, sufficient to violate Article 26. Cf. Raytheon v. Commissioner of Revenue, 455 Mass. 334, 342-45 (2009) (declining to adopt interpretation of state statute merely because other states' courts had adopted that interpretation of the same statutory language).

Moreover, there is nothing "unusual" about the forfeiture of money or property for punitive and deterrent purposes. See, e.g., G.L. c. 271, § 1 (forfeiture of twice the amount of certain gambling winnings); G.L. c. 94C, § 47 (forfeiture of monetary proceeds of drug distribution and property used in the drug trade); G.L. c. 23K, §37 (monetary fines and penalties for violations of rules for legal gaming establishments); G.L. c. 132A, § 7A (civil fines and penalties for violation of environmental laws); G.L. c. 149, § 27C (civil fines and penalties for violating

wage laws and other workplace rules); G.L. c. 138, §§ 45-50 (forfeiture of alcoholic beverages kept for unlawful sale); 26 U.S.C. § 6654 (imposition of penalty for underpayment of estimated taxes). Rather, such forfeitures and penalties are typical across government and regulated entities. That forfeiture of a retirement allowance might follow upon a public employee's abuse of his public office, earnings, and authority, to deter misconduct by such employees, protect the public fisc, and preserve respect for government service, see DiMasi v. State Board of Retirement, 474 Mass. 194, 196 (2016), is hardly extraordinary.

As such, if this Court reaches this issue, it should conclude that the forfeiture at issue does not violate the Cruel or Unusual Punishments Clause of Article 26.

B. Article 26's Excessive Fines Clause Is No More Extensive Than the Eighth Amendment in the Pension Forfeiture Context.

This Court should reject Raftery's argument that the Excessive Fines Clause of Article 26 is somehow broader than the Eighth Amendment's in the context of pension forfeiture. This result is appropriate where: (i) the Eighth Amendment and Article 26's Excessive Fines Clauses are textually identical; (ii) the test articulated under Bettencourt already achieves the aims of proportionality enshrined in both Clauses; (iii) this Court and lower courts in the Commonwealth have repeatedly considered the constitutionality of forfeiture under the Bettencourt

factors; and (iv) Raftery offers no persuasive reasons for the Court to give Article 26's language a more expansive construction.

First, the test articulated in Bettencourt already achieves the aims of proportionality at the heart of not only the Eighth Amendment but also Article 26. As this Court emphasized in Bettencourt: "[t]he touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." Bettencourt, 474 Mass. at 678 (quoting United States v. Bajakajian, 524 U.S. 321, 334 (1998)). The test, as discussed above, carefully considers the relationship between the forfeiture at issue and the gravity of the underlying offense triggering forfeiture. Raftery offers no reason why this Court should revisit those factors and take an approach different than the one set forth in Bettencourt.

Second, this Court and lower courts in the Commonwealth have repeatedly assessed the excessiveness of pension forfeitures under the standard articulated in Bettencourt (and Bajakajian) since this Court issued its decision in MacLean v. State Board of Retirement, 432 Mass. 339 (2000). See State Bd. of Ret. v. Finneran, 476 Mass. 714 (2017); Maher v. Retirement Bd. of Quincy, 452 Mass. 517 (2008), cert. denied 556 U.S. 1166 (2009); Bisignani v. Justices of Lynn Div.

of Dist. Ct. Dep't of Trial Ct., 100 Mass. App. Ct. 618 (2022); Flaherty v. Justices of the Haverhill Div. of the Dist. Ct. Dep't of the Trial Ct., 83 Mass. App. Ct. 120 (2013). And countless district court decisions (and superior court decisions on certiorari review) have applied the same standard. It is a well-developed, well-understood, and familiar standard for the lower courts, and no alterations in the formula have been seen as necessary or desirable. Raftery's argument, if accepted, would lead to two separate tests for pension forfeiture in this Court and the lower courts—one under the Eighth Amendment and Bettencourt, and one under Article 26. The result would be a great deal of uncertainty, and inconsistent application of the applicable standards, making these already-difficult cases even more challenging for lower courts.

Finally, Raftery has not offered any persuasive argument based on text, history, or case law[21] to suggest that identical language in the Excessive Fines Clause of Article 26 should be construed differently as it relates to pension forfeiture from the Eighth Amendment. Accordingly, this Court should conclude

[21] As far as the Board is aware, no appellate court has ever construed Article 26's Excessive Fines Clause in the context of pension forfeiture, and there are scant appellate decisions applying the Clause in any context. See Commonwealth v. Novak, 272 Mass. 113 (1930) (holding that double forfeiture of winnings upon gambling conviction was not excessive under Article 26).

that, in the specific context of pension forfeiture, Article 26 is no more expansive than the Eighth Amendment, and that therefore a forfeiture is not unconstitutionally excessive unless it is grossly disproportional to the gravity of the offense.

C. Even If Article 26's Limits on Pension Forfeiture Are Broader Than Under the Eighth Amendment, a Broader Interpretation Would Be of No Benefit to Raftery.

Even if this Court were to interpret Article 26's Excessive Fines Clause more broadly than the cognate clause of the Eighth Amendment in the context of pension forfeiture, notwithstanding the identical language of those clauses, such an interpretation would not benefit Raftery.

To begin, Raftery does not articulate a specific standard for this Court to consider under the Excessive Fines Clause of Article 26. But he does suggest that an appropriate standard would focus on a comparison between the actual monetary harm stemming from the offense and the total forfeiture amount, which in his case would factor into the analysis the assertion that he has already "paid his debt to society" through restitution and service of his sentence. Br.41-42. But the actual monetary harm is an inadequate proxy for the gravity of an offense.

Notably, this is precisely the type of analysis this Court has previously rejected under the Eighth Amendment. See Flaherty, 83 Mass. App. Ct. at 124

("[T]he proportionality analysis under the Eighth Amendment does not turn on whether the monetary value of the pension forfeiture exceeds that of the stolen materials." (citing MacLean, 432 Mass. at 349)). Indeed, a test turning solely on the actual monetary harm would be unduly narrow—and even undermine the concept of proportionality at the heart of Bettencourt and the Eighth Amendment—in all but a small category of financially motivated crimes. It would not reach, for example, the conduct at issue in Maher v. Retirement Board of Quincy, 452 Mass. 517 (2008), where a city employee was convicted of breaking and entering into Quincy City Hall to review and tamper with his personnel file, or the conduct at issue in State Board of Retirement v. Finneran, 476 Mass. 714 (2017), where the former Speaker of the Massachusetts House of Representatives was convicted of obstruction of justice after providing false testimony in a federal-court action related to his official duties.

Moreover, a test that renders dispositive the actual monetary harm would not take into account the non-financial harms stemming from Raftery's offense, which are significant here. As the District Court found, and Raftery does not dispute, his offense harmed the public fisc, diminished public safety, undermined public trust in government and law enforcement, and negatively impacted the MSP's reputation. Finally, as the District Court recognized, pension forfeiture is intended

to have a deterrent effect. In this Court's words: "[t]here is little deterrence in simple disgorgement of ill-gotten gain on being caught. Deterrence requires more, a penalty that places the violator in a position worse than he would have occupied before his violation." MacLean, 432 Mass. at 349 (upholding pension forfeiture) (emphasis in original).

Raftery also appears to suggest that an appropriate test would emphasize the sentence actually imposed, and not the maximum aggregate sentence provided for by Congress or the Legislature. But this is directly contrary to all of the case law on this issue, and erroneously disregards that some sentences may be lower than possible because of factors unrelated to the seriousness of the crime, such as the offender's individual circumstances or the otherwise-laudable penological interest in rehabilitation. Indeed, consideration of the collateral consequence of pension forfeiture will rarely ever be (reliably) considered during criminal sentencing, because the Board's actual forfeiture decision only comes much later. And, if forfeiture is considered in the judge's formulation of a criminal sentence, it will always result in mitigation of the actual sentence imposed, creating a self-fulfilling prophecy in which a lenient sentence results in a "constitutionally excessive" forfeiture.

Raftery makes much of the District Court's conclusion of law that pension forfeiture is "flawed" and constrains the Court's ability to assess "true proportionality" in assessing whether forfeiture is appropriate. Br.43-44. Raftery contends that, because of this limitation, only the federal judge who sentenced Raftery truly assessed proportionality as it relates to him, Br.44, presumably because the judge sentenced him to "only" three months' imprisonment and restitution in the amount of his fraudulently procured overtime. But the exercise under the Eighth Amendment is (and the exercise under Article 26 should be) whether the forfeiture is "grossly disproportional" to the seriousness of the offense, not whether there is a perfect match between the forfeiture and the offense.[22] Raftery has not offered any meaningful justification for why the calculus should be altered, and how such alteration would benefit him, under Article 26.

Even if this Court were to adopt some or all of the factors Raftery suggests, or some other factors not identified in Bettencourt, such alterations to the proportionality analysis would not benefit Raftery. As discussed above, Section II, both the sentencing judge and the District Court concluded Raftery's offense was

[22] Moreover, what Raftery ignores is that the maximum penalties the Legislature sets forth for a crime is meant to give insight into the seriousness of the offense itself; not for the actual sentence imposed to be used in the excessive fine analysis as an indication of what would be proportionate, in hindsight.

"serious." Even assuming greater emphasis on the monetary harm stemming from the offense, or on the actual sentence imposed, this does not diminish that the forfeiture here was imposed upon an individual who "engaged in fraud when he was supposed to be enforcing the law" and "intentionally and willingly engaged in a scheme to acquire pay without working and to cover up his conduct." CL.58, 60, Add.73-74. Raftery's case is not one in which his criminal conduct was modest compared to his forfeiture amount—as was the case in Bettencourt, see 474 Mass. at 72, 75 (forfeiture of pension valued between $659,000 and $1.9 million excessive where, "although there certainly was harm caused by Bettencourt, it was relatively small as compared to our other cases"). Rather, as the District Court's findings of fact and the record reflect, Raftery's conduct was of sufficient gravity to support forfeiture in this instance, and expansion of Article 26's analysis beyond Bettencourt in the ways Raftery suggests would not yield a different result.

Accordingly, this Court should decline to adopt a new test under Article 26's Excessive Fines Clause.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment below.

Respectfully submitted,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

/s/ Katherine M. Fahey
Katherine M. Fahey
Assistant Attorney General
Government Bureau
One Ashburton Place
Boston, Massachusetts 02108
(617) 963-2078
BBO # 699003
Katherine.Fahey@mass.gov

Date: February 12, 2025

CERTIFICATE OF COMPLIANCE

I, Katherine M. Fahey, hereby certify that the foregoing brief complies with all of the rules of court that pertain to the filing of briefs, including, but not limited to, the requirements imposed by Rules 16 and 20 of the Massachusetts Rules of Appellate Procedure. The brief complies with the applicable length limit in Rule 20 because it contains 7,462 words in 14-point Times New Roman font (not including the portions of the brief excluded under Rule 20), as counted in Microsoft Word (version: Word 2016).

/s/ Katherine M. Fahey
Katherine M. Fahey
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2024, I filed with the Supreme Judicial Court and served the attached Brief of Appellee State Board of Retirement in the above-captioned case through eFileMA and email on the following:

Thomas R. Kiley
CEK Boston, P.C.
One International Place, Suite 1820
Boston, MA 02110
tkiley@ceklaw.net

/s/ Katherine M. Fahey
Katherine M. Fahey # 699003
Assistant Attorney General
One Ashburton Place
Boston, MA 02108
Katherine.Fahey@mass.gov
(617) 963-2078

ADDENDUM

JUDGMENT FOR DEFENDANT(S)	DOCKET NUMBER 2254CV000232	Trial Court of Massachusetts District Court Department Civil Session

Gregory Raftery v. State Board of Retirement

PLAINTIFF(S) WHO ARE PARTIES TO THIS JUDGMENT	COURT NAME & ADDRESS
Gregory Raftery	Dedham District Court 631 High Street Dedham, MA 02026
DEFENDANT(S) WHO ARE PARTIES TO THIS JUDGMENT	
State Board of Retirement	

ATTORNEY (OR PRO SE PARTY) TO WHOM THIS COPY OF JUDGMENT IS ISSUED	NEXT COURT EVENT (IF ANY)
Katherine M Fahey, Esq. Office of the Attorney General 1 Ashburton Place Boston, MA 02108	**No Future Event Scheduled**

JUDGMENT FOR DEFENDANT(S)

On the above action, after trial by a judge, IT IS ORDERED AND ADJUDGED by the Court (Hon. James Byrne) that the decision of the defendant agency or official is **AFFIRMED**.

SEE ATTACHED ORDER

NOTICE OF ENTRY OF JUDGMENT

Pursuant to Mass. R. Civ. P. 54, 58, 77(d) and 79(a), this Judgment has been entered on the docket on the "Date Judgment Entered" shown below, and this notice is being sent to all parties.

DATE JUDGMENT ENTERED	CLERK-MAGISTRATE/ASST. CLERK
04/16/2024	X

ORDER

For the reasons set forth above, I rule and order as follows:

1. The pension forfeiture mandated in this case pursuant to G.L. c. 32, §15(4) is constitutional under the Excessive Fines Clause of both the 8th Amendment to the United States Constitution and Article 26 of the Massachusetts Declaration of Rights. The decision of the Defendant SRB is justified.
2. The mandated pension forfeiture does not constitute a violation of the "cruel or unusual" provision of Article 26.
3. The Plaintiff Gregory Raftery's Motion for Judgment on the Pleadings is DENIED.
4. The Defendant State Board of Retirement's Motion for Judgment on the Pleadings is ALLOWED. Judgment is to enter on behalf of the Defendant.

Dated: April 16, 2024

James E. Byrne
Justice – Dedham District Court

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss. **DEDHAM DISTRICT COURT**
DOCKET NO. 2254CV000232

GREGORY RAFTERY,
Plaintiff

v.

STATE BOARD OF RETIREMENT,
Defendant

FINDINGS OF FACT, RULINGS OF LAW, DECISION AND ORDER ON PETITION TO REVIEW PENSION FORFEITURE

The Plaintiff, Gregory Raftery ("Plaintiff", "Raftery") brings his Complaint/ Petition to Review, pursuant to G. L. c. 32, § 16(3), seeking reversal of a decision by the Defendant Massachusetts State Board of Retirement ("Defendant", "SBR") imposing a mandatory forfeiture of Raftery's pension under G.L. c. 32, § 15(4), which provides that no member of a public employee retirement system shall be entitled to a retirement allowance after conviction of a criminal offense involving violation of the laws applicable to his or her office or position. Raftery does not contest the factual basis for the mandated forfeiture, but instead claims that the decision of the SBR violates the "excessive fines" provisions of Article XXVI of the Massachusetts Declaration of Rights

("Article 26", "Art. 26") and the Eighth Amendment to the United States Constitution ("8th Amendment") as well as the "cruel or unusual" provision of Art. 26.

Pursuant to G.L. c. 32, § 16(3)(a), this Court is authorized to hear all evidence as discussed in Bisignani v. Justices of the Lynn Division of the District Court Department of the Trial Court, 100 Mass. App. Ct. 618,621 (2022) and determine whether the forfeiture was justified. The parties may present new evidence to the Court and/or rely on the Administrative Record from the SBR proceedings and have the appeal decided by motions for judgment on the pleadings. In fact, in July of 2023, the parties filed, and the Court allowed, a Joint Motion to Proceed Based on Agreed Upon Record. The Agreed Record ("AR") consisted of the SBR Administrative Record in its entirety and eleven additional documents which the parties agree may form the factual basis for the Court's consideration of whether Raftery's pension was properly forfeited. The citations which follow are to the pages of the Agreed Record, which are labelled AR____.

Additionally, the parties presented oral arguments on the merits at a hearing before Judge Carroll on December 1, 2023 (Judge Carroll has since recused herself from this case). Although I was not present at the hearing, I have listened to the entire recording of that hearing twice. The parties filed Memoranda of Law in support of their respective positions and have also each filed proposed Findings of Facts and Conclusions of Law for the Court's consideration. The Court has accepted the Agreed Record and has considered all of its contents as well as the briefs on the merits and the

other filings of the parties. The Court will consider these as cross motions for judgment on the pleadings.

Discussion

Gregory Raftery served as a trooper for the Massachusetts State Police ("MSP") for just shy of 22 years. AR 224. In 2015 and 2016, he was assigned to Troop E and had responsibility for enforcing criminal laws and traffic regulations while patrolling the Massachusetts Turnpike ("Turnpike"). AR 78,225. During those years, as a Troop E trooper, Raftery was able to earn overtime pay (1.5 times regularly hourly pay) by working two Massachusetts State Police ("MSP") initiatives, the Accident Injury Reduction Effort ("AIRE") and the similar "X-Team" program. AR 78,225. The objectives of the AIRE and X-Team programs were to reduce accidents and injuries on the Turnpike through enhanced patrols and the targeting of speeders and aggressive drivers. AR 78-79,225. Troopers working the AIRE program worked overtime in four hours blocks and worked eight hours shifts for the X-Team. AR 79, 226. These programs were funded by the Massachusetts Department of Transportation ("Mass DOT"), which, in turn, received federal funds from the U.S. Department of Transportation (U.S. DOT") AR 78,226.

By 2018, federal investigators discovered that a number of the members of Troop E, including Raftery, had allegedly sought and received overtime for AIRE and X-Team shifts they did not complete. AR 80-87, 226-227. This investigation led to Raftery being charged in an Information on June 26, 2018, in U.S. District Court for the District of

Massachusetts with (1) embezzling from an agency receiving federal funds in violation of 18 U.S.C §666(a)(1)(A), and (2) aiding and abetting in violation of 18 U.S.C. §2, AR 39-45. It was alleged that Raftery received a total of $51,337,50 in payments for work he did not perform. AR 85,227. Approximately one week later, on July 2, 2018, Raftery proffered a guilty plea to the embezzlement charge of the Information, waiving indictment. AR 48-56, 87. On March 26, 2019, U.S. District Judge Young sentenced Raftery to three months imprisonment and one year of supervised release. AR 109-113. Raftery was also ordered to pay $51,337.50 in restitution to MSP and a criminal monetary assessment of $100. *Id.*

On March 22, 2018, prior to the initiation of criminal charges against him, Raftery retired from the MSP at age 47. AR 228. His retirement benefit was $72,205 per year. AR 229. On March 29, 2019, subsequent to Raftery's conviction and sentencing in federal court, SRB voted to suspend Raftery's retirement allowance and to convene a hearing to determine Raftery's pension rights. AR 221. A hearing at the SBR was held on July 11, 2019, presided over by a hearing officer and at which Raftery was represented by counsel. AR 164-99. On March 24, 2022, the hearing officer issued a Recommended Findings and Decision that concluded, because Raftery had been convicted of criminal offense involving violations of law applicable to his office or position, his pension was required to be forfeited and that any pension benefits which had been paid would be required to be returned, less contributions made. AR 236-37. SRB hearing officer also received and credited uncontroverted testimony from the State Actuary for the Public Employee Retirement Administration Commission that the

present value of Raftery's future benefits was $1,025,000. AR 229,236. On March 31, 2022, SRB voted to accept the findings and recommendations of the hearing officer and Raftery received notice of the decision on or about May 11, 2022. AR 238-39. This action ensued.

The Plaintiff asserts that the mandated total forfeiture of his retirement allowance and health benefits constitutes an excessive fine under the 8th Amendment as well as Art. 26. The Plaintiff further asserts that the mandatory total forfeiture constitutes cruel or unusual punishment under Art. 26, which is believed to be an issue of first impression in pension forfeiture cases in this state. The Defendant contends that Art. 26 does not apply since the SBR is neither a "Court" nor a "Magistrate" and because the cruel or unusual provisions of Art. 26 apply to matters involving the constitutionality of prison sentences or the death penalty and not to monetary (pension) forfeitures.

In PERAC v. Bettencourt, 474 Mass. 60 (2016), the Supreme Judicial Court established that G.L. c. 32, § 15 (4) ("§ 15 (4)") qualified as "punishment" and was a fine within the meaning of the excessive fines clause of the 8th Amendment. The Court stated, "[t]he touchstone of the constitutional inquiry is the principle of proportionality. The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." Id at 72 (quoting United States v. Bajakajian, 524 U.S. 321,334 (1998) (ellipsis in original).

The Supreme Judicial Court has not yet addressed whether Art. 26 also applies to § 15 (4) pension forfeitures in the context of being an excessive fine, although the Court notes that two relatively recent Massachusetts District Court decisions dealing with the issue, Cesan v. State Board of Retirement , Springfield District Court, 2023CV0944, (October 4, 2022) and Guilino v. State Board of Retirement, Pittsfield District Court, 2227CV0072, (September 13, 2023), (See Attachments A and B to Plaintiff's brief), were decided pursuant to the excessive fines clauses of both the 8th Amendment and Art. 26. The Plaintiff also contends that Art. 26 provides greater protection and is afforded broader application than the 8th Amendment.

The Plaintiff further argues that as § 15 (4) qualifies as punishment, Art.26 precludes the imposition of punishments that are cruel or unusual. The Plaintiff notes that the Art. 26 proscription against cruel or unusual punishment is likewise based on proportionality. "The essence of proportionality is that punishment for crime should be graduated and proportioned to both the offender and the offense." Commonwealth v. Concepcion, 487 Mass. 77, 86 (2021); see also Commonwealth v. Perez, 477 Mass. 677, 683 (2017). The Plaintiff espouses application of the proportionality tripartite analysis discussed in Perez and Concepcion, including a comparison of the challenged penalty (here, total forfeiture of Plaintiff's retirement allowance and health benefits) "with the penalties prescribed for the same offense in other jurisdictions." Perez at 684. Again, the Defendant responds that the cruel or unusual provision of Art. 26 does not apply in the setting of pension forfeitures.

Findings of Fact

1. Plaintiff Gregory Raftery ("Raftery") was a trooper for the Massachusetts State Police ("MSP") from March 28, 1996, until his retirement on March 28, 2018. AR224.

2. On November 1, 1996, Raftery took an oath to "honestly and faithfully" serve the Commonwealth of Massachusetts, to "faithfully perform" his duties, and to "submit to any penalties, fines or forfeitures imposed in accordance with the rules and regulations of the [MSP]." AR.128, 224; M.G.L. c. 22C, § 15.

3. When Raftery retired, on March 22, 2018, at age 47, he had 21 years, nine months, and 25 days of creditable service. AR.228. His retirement benefit was $72,205 per year, or a total present value of $1,205,000, exclusive of health insurance. The Court recognizes those health insurance benefits to be significant, although the amount is not established.

4. During 2015 and 2016, Raftery was assigned to Troop E of the MSP, which was responsible for enforcing criminal laws and traffic regulations on the Massachusetts Turnpike ("Turnpike"). AR.225, 79.

5. In addition to earning a salary for a regular 8-hour work shift, troopers within Troop E were also able to earn hourly overtime pay equivalent to 1.5 times their regularly hourly pay, for various overtime assignments. AR.78. In particular, Troop E troopers could earn overtime pay by working for two MSP initiatives, the Accident

Injury Reduction Effort ("AIRE") program and the similar "X-Team" program. AR.225, 78.

6. The objectives of the AIRE and X-Team programs were to reduce accidents and injuries on the Turnpike through an enhanced presence of troopers patrolling the Turnpike, and to target individuals who were speeding or engaging in aggressive driving. AR.78-79, 225. Troopers who were assigned to the AIRE Program conducted radar patrols on the Turnpike in four-hour blocks outside of their regular work schedules. AR.79, 225. X-Team shifts were eight hours long. Id.

7. As part of their AIRE and X-Team overtime performance and duties, troopers regularly issued citations. AR.79. In issuing a citation, troopers were required to complete the appropriate sections of the traffic citation, including the identity of the motorist of the vehicle, as well as the date, time, and place of the traffic violation, and to do so accurately. AR.79. AIRE and X-Team overtime rules then required troopers to forward the citation to the officer in charge, along with all the required paperwork needed to process them through the Registry of Motor Vehicles ("RMV"), the state court system, and the MSP. AR.225, 80-81.

8. Both the AIRE and X-Team programs were funded by the Massachusetts Department of Transportation ("MassDOT"), which paid the MSP for the invoices submitted for services rendered, including overtime shifts. AR.226. The MassDOT, in turn, received funding for these initiatives from the United States Department of

Transportation ("U.S. DOT"), which annually provides hundreds of thousands of dollars in funding to law enforcement agencies. Id.

9. By 2018, federal investigators had discovered Raftery was engaged in an embezzlement and cover-up scheme associated with his involvement in the AIRE and X-Team programs. AR.82-87. Federal agents determined that, during 2015 and 2016, Raftery frequently failed to work the entire 4-hour AIRE overtime shift or 8-hour X-Team overtime shift, leaving his assignment up to seven hours early in some cases. AR.82-83. In other cases, he collected overtime pay without showing up to work for a given overtime shift at all. AR.83.

10. At a rate of $75/hour, Raftery received a total of $51,337.50 in payments from the MSP for a total of 729 hours of work that he never performed. AR227, 85.

11. Raftery took steps to conceal this scheme by internally submitting to the MSP copies of citations that he never issued to drivers, pertaining to non-existent misconduct by drivers. AR.83. Raftery destroyed or discarded the duplicate copies of these citations that should have been provided to MSP court officers, the RMV, and the drivers themselves. Id.

12. On June 26, 2018, the United States Attorney for the District of Massachusetts filed a felony information ("Information") against Raftery in U.S. District Court for the District of Massachusetts, charging Raftery with: (1) embezzling from an agency receiving federal funds in violation of 18 U.S.C. § 666(a)(1)(A), and (2) aiding and abetting in violation of 18 U.S.C. § 2. AR.38-45.

13. On June 17, 2018, Mr. Raftery signed a Plea Agreement with the U.S. Attorney, in which he agreed to plead guilty to the Information and waive indictment. AR.48-56.

14. On July 2, 2018, a plea hearing was held before Judge William G. Young. Mr. Raftery proffered a guilty plea to 18 U.S.C. sec. 666(a)(1)(A) of the Information, waiving indictment. AR.225-36.

15. On March 26, 2019, Judge Young sentenced Raftery to 3 months in prison, one year of supervised release thereafter, and imposed restitution in the amount of $51,337.50, and a mandatory special assessment of $100. AR.268-70.

16. A violation of 18 U.S.C. § 666(a)(1)(A) carried the following maximum penalties: up to ten years of incarceration; three years of supervised release; a maximum fine of $250,000, or twice the gross gain/loss stemming from the offense, whichever is greater; a mandatory special assessment of $100; restitution and/or forfeiture to the extent charged in the Information. AR.48, 35; 18 U.S.C. § 666. Judge Young stated at the time of sentencing, "the highest sentence the Court could constitutionally impose" in accordance with the provisions of 18 U.S.C. § 3553(a) for Mr. Raftery's offense was 27 months. AR. 255. Under the then advisory sentencing guidelines, Judge Young indicated he could "impose a fine of not less than $5,500, nor more than $55,000. Restitution in this case is calculated at $51,337.50. And there must be a special assessment." AR.257.

17. Raftery met the terms of his sentence by serving the term of imprisonment and paying both the fine of $100 and the order of restitution, the latter via garnishment of his Deferred Compensation SMART 547 Plan. Raftery thus made full restitution to MSP in an amount equal to that he received for the overtime hours he did not perform.

18. On March 29, 2019, the SBR voted pursuant to G.L. c. 32 § 15, to suspend the retirement allowance that Raftery was then receiving and to convene a hearing to determine Raftery's rights to a pension going forward. AR.221.

19. On March 24, 2022, after a hearing on July 11, 2019, the SBR's Hearing Officer issued Recommended Findings and Decision, concluding that because Raftery had been "convicted of criminal offenses involving violations of law applicable to his officer or position," his pension was required to be forfeited under G.L. c.32, § 15(4). AR.236.

20. The Hearing Officer found that the estimated present value of Raftery's future retirement allowance to be $1.025 million, exclusive of health insurance. AR.229,236. Raftery did not dispute that, at the time of the forfeiture, the estimated present value of his pension was $1.025 million, exclusive of health insurance.

21. The Hearing Officer further recommended that, because Raftery had begun to receive a retirement allowance (in 2018) after committing the criminal offenses (in 2015 and 2016), he would be required under G.L. c. 32, § 15(6), to return any benefits paid, less any contributions that he made during his employ. AR.237. The Hearing Officer did not consider Raftery's argument that the forfeiture would be an "excessive

fine" under the Eighth Amendment to the U.S. Constitution and Article 26 of the Massachusetts Declaration of Rights, observing that such questions were beyond the SBR's authority. AR.235-36 (citing Maher v. Justices of Quincy Div. Of Dist. Ct Dep't, 67 Mass. App. Ct. 612, 619 (2006)).

22. Subsequently, the board voted to adopt the Hearing Officer's Recommended Findings and Decision, and the SBR notified Raftery of its decision on May 11, 2022. AR.240-244.

Rulings/Conclusions of Law

23. Jurisdiction and venue of this matter lie with this Court under G.L. c. 32, § 16(3)(a) which is to review the action and decision of the State Board of Retirement and "determine whether such action was justifiable."

24. Raftery's challenge is not framed as a facial challenge to the constitutionality of G.L. c. 32, § 15(4). He challenges the application of it to him and his wife under the circumstances presented by the facts set forth in the Agreed Record.

25. General Laws c. 32, § 15(4), states, in pertinent part: "In no event shall any member after final conviction of a criminal offense involving violation of the laws applicable to his office or position, be entitled to receive a retirement allowance under the provisions of section one to twenty-eight, inclusive, nor shall any beneficiary be entitled to receive any benefits under such provisions on account of such member."

26. Section 15(4) will result in a forfeiture where a member either "(1) engage[s] in criminal activity factually connected to his or her position or (2) violate[s] a law expressly applicable to public employees or officials." Essex Reg'l Retirement Bd. v. Swallow, 481 Mass. 241, 248 (2019).

27. The legal issue presented is whether the application of G.L. c. 32, § 15(4) by the State Board of Retirement totally forfeiting the retirement allowance and health benefits of Mr. Raftery and his wife based on his federal conviction results in a violation of rights guaranteed to them under the Eighth Amendment to the Constitution of the United States or Article 26 of the Declaration of Rights. ("Article 26").

28. This Court's role is not to determine whether the pension forfeiture statute is constitutional, but rather whether the State Board of Retirement's application of the penalty provisions it imposes on Raftery, his wife and family are either an excessive fine, or constitute cruel or unusual punishment.

29. With respect to that issue presented, no deference is to be afforded to the administrative determination made by the State Board of Retirement, which neither has, nor claims to have, any authority to determine whether the application of the forfeiture statute to Raftery is constitutional.

30. The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

31. Article 26 of the Massachusetts Declaration of Rights similarly provides: "No magistrate or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments."

Plaintiff's Constitutional Claim Under The Cruel and Unusual Clause of Article 26

32. In addition to claiming that SBR's order of total forfeiture of Raftery's retirement benefits was an excessive fine under the 8th Amendment and Art. 26, the Plaintiff argues that it constitutes cruel or unusual punishment under Art. 26.

33. Without addressing here whether SBR acts as a magistrate or court of law for purposes of Art. 26, which issue is addressed below, the Court finds the Plaintiff's cruel and unusual argument to be creative and earnest, but ultimately, unavailing.

34. The Plaintiff notes that the total pension forfeiture qualifies as punishment. He argues that it is unusual punishment because it is out of the ordinary in the realm of public pension forfeiture provisions as compared to other states and the federal government. He posits that it is cruel punishment because Massachusetts public employees do not receive Social Security benefits in connection with their employment.

35. The Plaintiff provides no authority for his proposition that the cruel or unusual provisions of Art. 26 apply to pension forfeitures. The Supreme Judicial Court, Appeals Court and Supreme Court have all applied the "excessive fines" clause in challenges to pension and other property forfeitures. Bettencourt and its progeny, as

well as Bajakajian, applied the Excessive Fines Clause as distinguished from the Cruel and Unusual Punishments Clause in assessing 8th Amendment challenges to forfeitures. The U.S Supreme Court has foreclosed challenges to property forfeiture under the Cruel and Unusual Punishments Clause because the Clause "is concerned with matters such as the duration or conditions of confinement." Alexander v. U.S., 509 U.S. 544, 558 (1993). In fact, in his written submissions, the cases which the Plaintiff references in advancing his cruel or unusual punishments argument under Art. 26 to pension forfeiture, generally relate to the constitutionality of prison sentences, conditions of confinement or the death penalty and not to pension or other property forfeitures. The Court also notes the disparity in the proportionality standard applied under the excessive fines clause with that of the cruel or unusual provision of Art. 26. To reach the level of cruel or unusual, the punishment must be so disproportionate to the crime that it "shocks the conscience and offends fundamental notions of human dignity", Commonwealth v. Jackson, 369 Mass. 904, 910 (1976), as opposed to the "grossly disproportionate" requirement for excessive fines. This heightened standard fairly suggests that the cruel or unusual clause of Art. 26 has application to a category of matters other than pension forfeiture.

36. The Court finds that the cruel or unusual provisions of Article 26 of the Declaration of Rights of the Massachusetts Constitution do not apply to the forfeiture of retirement allowance benefits and health insurance as provided by G.L. c. 32, §15(4).

Plaintiff's Constitutional Claims Under The Excessive Fines Clause Of The 8th Amendment And Article 26

37. The Plaintiff seeks application of the Excessive Fines clause under Art. 26, as well as the 8th Amendment, in his pension forfeiture challenge.

38. The Supreme Judicial Court has not addressed whether the Art. 26 excessive fines clause applies to mandatory forfeitures under §15(4). The Defendant SBR argues that it is not a "magistrate" or "court of law" as provided in Art.26 and thus Art. 26 does not apply. However, the Defendant further contends, to the extent that the prohibition on the imposition of excessive fines under Art. 26 does apply, it is not distinct from, or somehow broader than, the Excessive Fines Clause of the 8th Amendment.

Article 26 Excessive Fine Claim: Magistrate or Court of Law

39. Art. 26 provides, in relevant part: "No magistrate or court of law, shall ... impose excessive fines". Art. 26 is specifically limited to punishments imposed by a magistrate or court of law. The Plaintiff does claim that the SBR acted as a magistrate. He does not claim that the SBR acted as a court of law. As discussed below, like recent decisions in two Massachusetts District Court cases (Cesan and Guilino) applying the Excessive Fines Clause in Art. 26, as well as the 8th Amendment, to pension forfeitures, I rule that the SBR acted as a magistrate, as that word had been historically understood.

40. Art. 26 of the Declaration of Rights of the Massachusetts Constitution, was adopted in 1780, approximately eleven years before the Excessive Fines Clause of the 8th Amendment of the United States Constitution was enacted. The United States Constitution was modelled, in part, after the Massachusetts Constitution. The Art. 26 prohibition against excessive fines emanated from concerns about abuses carried out by the Crown through its courts and appointed officials. Those concerns provided impetus for the ensuing 8th Amendment and its Excessive Fines clause, which was aimed at preventing an offender from being "pushed absolutely to the wall" by decisions carried out by agents or officers within the executive branch of government and its "prosecutorial" power. See Browning-Ferris Indus. Of Vt., Inc. v. Kelco Disposal, Inc., 492 U.S. 257, 266 (1989). The framers of Art. 26 and the 8th Amendment were seeking to prohibit imposition of excessive fines by agents and representatives of government at both the judicial and executive levels.

41. The word magistrate was used in the Massachusetts Declaration of Rights in reference to officials of the Commonwealth administering the law, regardless of where they served in the three branches of government. The Governor of the Commonwealth, whom we today associate with heading the executive branch of government, was identified as both the "supreme executive magistrate" (Part II, Chapter II, Section I, Article I) and "chief magistrate" (Article XIII) in the Massachusetts Constitution. The U.S. Supreme Court has noted that "magistrate" is not confined to persons "who exercise general judicial powers, but it includes others whose duties are strictly executive." Compton v. State of Alabama, 214 U.S. 1, 7 (1909). *Black's Law Dictionary,*

6th Edition, (1990), defines magistrate as "a public civil officer, possessing such power – legislative, executive or judicial - as the government appointing him may ordain." The *Merriam-Webster Dictionary* defines magistrate as "a local official exercising administrative and often judicial functions". The word magistrate appears to cover an assortment of officials and conduct in all three branches of government.

42. I find that the SBR, in ordering the forfeiture of Raftery's pension benefits, exercised the power of a "magistrate" as that term is used in Art. 26.

43. I rule that the Excessive Fines clause of Art. 26 (as well as that of the 8th Amendment), applies to the total forfeiture of the Defendant's pension benefits under G. L. c. 32, §15(4). Therefore, state constitutional protection does apply to §15(4) forfeitures.

44. As another Massachusetts District Court concluded in examining a state trooper's similar constitutional challenge to forfeiture: "the minor differences in the language and structure of both laws [Article 26 and the Eighth Amendment] do [] not support [plaintiff's] contention that art.26 provides him additional constitutional protection or mandates consideration of different factors than those discussed in United States v. Bajakajian, 524 U.S. 321, 336 (1998) and its progeny ...[B]oth constitutional provisions were adopted close in time and were intended to provide the same type of protection from excessive fines for the same historical reasons." Cesan v. St. Bd. Of Retirement, 2023CV00944, (Oct. 24, 2022, Mass. Tr. Ct., Springfield Div.). Therefore, the Court's analysis is the same under either Article 26 of the Massachusetts Declaration

of Rights or the Eighth Amendment to the U.S. Constitution. Under either authority, the Plaintiff bears the burden of demonstrating that the forfeiture is excessive.

Proportionality Analysis Under the 8th Amendment and Art.26

45. Forfeiture of a public pension pursuant to G.L. c. 32, § 15(4), is a "fine" within the meaning of the "excessive fines" clause of the Eighth Amendment. Public Employee Retirement Admin. Comm'n v. Bettencourt, 474 Mass. 60, 71 (2016).

46. In determining whether forfeiture of a public pension is excessive under the Eight Amendment, "'[t]he touchstone of the constitutional inquiry... is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that is designed to publish.'" Id. At 72 (quoting United States v. Bajakajian, 524 U.S. 321, 334 (1998) (ellipsis in original)).

47. In conducting that inquiry, this Court "compare[s] the forfeiture amount to that offense, and '[I]f the amount of the forfeiture is grossly disproportional to the gravity of the defendant's offense, it is unconstitutional.'" Id. (quoting Bajakajian, 524 U.S. at 337).

48. Specially, this Court looks to the following factors to determine "the gravity of the offense." (1) the nature and circumstances of the offense; (2) whether the offense was related to any other illegal activities; (3) the maximum potential penalty for the crime that could have been imposed; (4) the harm resulting from the offense. Id.

49. In determining whether the forfeiture was excessive under the 8th Amendment and Art. 26, in addition to the standard and factors outlined in Bettencourt and Bajakajian, this Court looks to other state and federal cases to determine what other factors may be considered in deciding whether the forfeiture was excessive. United States v. Heldeman, 402 F. 3d 220, 222 (1st Cir. 2005) was a federal forfeiture case involving health care fraud and drug distribution. In Heldeman, the First Circuit Court of Appeals, in determining whether the forfeiture was excessive, considered the following factors: (1) whether the defendant falls into the class of persons at whom the criminal statute was principally directed, (2) other penalties authorized by the legislature or the Sentencing Commission, and (3) the harm caused by the defendant. In United States v. Levesque, 548 F3d 78, 83 (1st Cir. 2008), another forfeiture case, the First Circuit Court of Appeals announced that, in addition to the factors described in Heldeman, a court could also consider the financial impact of the forfeiture upon the defendant and whether it would deprive the defendant of his or her livelihood.

50. The Court notes that Raftery has not presented a Levesque loss of livelihood/financial impact argument in his excessive fine claim in this case. At hearing, his counsel explicitly represented to the Court that Raftery does not claim to be "destitute" and is able to continue earning a living and, in fact, is earning a living. Plaintiff appears to argue, as part of his cruel and unusual punishment claim, that the loss of pension benefits and health insurance has imposed a financial hardship on his wife and three daughters relative to payment of college tuitions and medical care.

1. The Amount of the Forfeiture

51. In cases of this type, Massachusetts courts have repeatedly assessed the value of a retirement by determining its present value. Bisignani v. Justices of the Lynn Div. Of Dist. Ct. Dep't, 100 Mass. App. Ct. 618, 622-23 (2022).

52. The parties agree that, at the time of the Board's forfeiture decision, the present value of Raftery's pension was $1,025,000. AR.229, 236. Again, that total present value calculation did not include the loss of health insurance, which the Court notes would be significant for family policy coverage over many years.

2. Gravity of the Offense

53. *The nature and circumstances of the offense*. Raftery pleaded to one offense – embezzlement. He admitted to engaging in a fraudulent scheme over the course of two years, involving 729 hours of overtime pay, totaling $51,337. He paid full restitution in that amount, in addition to serving a three-month sentence, a year of supervised release and a special assessment of $100. AR. 82-83.

54. Contrary to Plaintiff's assertion that this was a "time and attendance" case, it involved more than collecting pay for time not worked. Raftery also took the further step of issuing "dummy" citations to conceal his conduct.

55. *Whether the offense was related to any other illegal* activities. There is no allegation or evidence that Raftery's convicted conduct relates to any other individual

wrongdoing. Raftery does not have any prior convictions. AR.261. Therefore, this factor under Bettencourt is not relevant here.

56. *The maximum sentence that could have been imposed*. In this case, Raftery was convicted of a violation of 18 U.S.C. § 666(a)(1)(A). The maximum statutory sentence for that offense is ten years in prison, three years supervised release, a maximum fine of $250,000, or twice the gross/loss, whichever is greater, a mandatory special assessment of $100, and restitution and forfeiture to the extent charged in the indictment or information. AR.48, 46, 35.

57. Judge Young stated at sentencing that the highest sentence the Court could constitutionally impose was 27 months and, under then advisory sentencing guidelines, a fine of not more than $55,000. AR 255, 257.

58. *The harm resulting from the offense*. Raftery's conduct harmed the public. Raftery took $51,337 of public money. AR.227, 85. Raftery engaged in the fraud when he was supposed to be enforcing the law – thus depriving the Commonwealth of service intended to increase public safety. AR.78-79, 225. Further, Raftery's behavior eroded public trust in the MSP and law enforcement in general.

59. As previously noted, the Plaintiff does not claim to be impoverished nor does he argue that he has been deprived of his livelihood or the ability to make a living because of the forfeiture. Accordingly, the Court makes no determination in that regard.

60. The Court finds that the gravity of the Defendant's crime is serious. Raftery received pay for hours that he was not present to work. However, this was not a matter

of an employee leaving work early before a shift ended and then being paid for the full shift – a practice which admittedly sometimes occurs in the workplace in both the public and private sectors, often with either the active or tacit approval of supervisors. Most significantly, in this case, the Defendant intentionally and willingly engaged in a scheme to acquire pay without working and to cover-up his conduct by creating false citations. It involved not only unworked hours and failing to be on duty when he was supposed to be actively patrolling the Turnpike (not in an office or administrative position), but went further, with purposefully concealing the unworked hours by fraudulently falsifying citations for motor vehicle infractions and driver misconduct which never occurred.

61. The Court finds that forfeiture is in order. If this were strictly a "time and attendance" case, as the Defendant suggests, then this Court would be inclined to view the need for forfeiture differently and perhaps accept that the sentencing sanctions imposed in the federal criminal case (incarceration, restitution, etc.) were sufficient, or even agree with the Defendant that ordinary time and attendance fraud might be best handled with employers through disciplinary or other employment-related action. But it is not. Further, the Defendant's payment of full restitution in this case is not enough to avoid forfeiture. "Deterrence requires more, a penalty that places the violator in a position *worse* than he would have occupied before his violation." MacLean v. State. Bd. Of Ret., 432 Mass. 339,349 (2000). The purpose of the pension forfeiture statute is to deter misconduct by public employees, protect the public fisc and preserve respect for government service. See DiMasi v. State Bd. Of Retirement, 474 Mass. 194 (2016).

62. The Massachusetts pension forfeiture law, G.L. c, 32, §15(4) mandates total forfeiture of a public employee's retirement allowance. This court recognizes that our appellate courts have generally upheld forfeiture decisions by the SRB – there is ample precedent. Cases involving similar amounts of forfeiture as this one has been upheld as constitutional. (See e.g. Bisignani -$1.5 million; Cesan - $969,516; Flaherty v. Justices of the Haverhill Div. of the Dist. Court Dep't of the Trial Court, 83 Mass. App. Ct. 120 (2013) - $940,000). In this case, the forfeiture is approximately four times the statutory maximum fine of $250,000 and slightly more than nineteen times the maximum guidelines fine of $55,000. After assessing all of the factors discussed above, I rule that the forfeiture amount of Raftery's pension allowance is not grossly disproportionate to the gravity of his offense and is within constitutional proportionality limits under both the 8th Amendment and Art. 26. I find the decision of the SRB is justified.

63. That being said, the Court does comment that the total forfeiture mandate of G.L. c. 32, §15(4) is flawed to the extent that it constrains the Court to an "all or nothing" proposition in determining forfeiture. In attempting to determine whether a forfeiture is excessive, the Court is required to assess whether the amount to be forfeited is proportionate to the gravity of the offense. The all or nothing condition restricts the Court in that determination in that it does not allow for the attempted application of measure, degree or balance. It precludes the ability to find true proportionality and the option to allow for a less than total forfeiture. It offers a bludgeon where a more precise instrument would be appropriate. The Court appreciates that following Bettencourt the Legislature did convene a special commission on pension forfeiture. The special

commission filed a report in 2017 making various recommendations, including eliminating the "all or nothing" directive in the statute and calling for a tiered approach that would allow for partial forfeitures at various levels. While these recommendations have not become law, they do provide a recognition that there may be better approaches to pension forfeiture which can provide for more appropriate forfeitures. This Court believes that a forfeiture law which does not require an all or nothing determination in all cases will still carry the deterrent effect desired. The Court also recognizes, as the Defendant points out, that many public pension systems provide alternative approaches to forfeiture, including non-forfeiture of benefits, partial forfeiture, Social Security benefits, retention of beneficiary benefits, retention of benefits accrued until the time of the offense and more. Again, these examples of other systems and ideas provide an opportunity for continued discussion and consideration of how this state might find a way for a more measured approach to forfeitures in this setting.

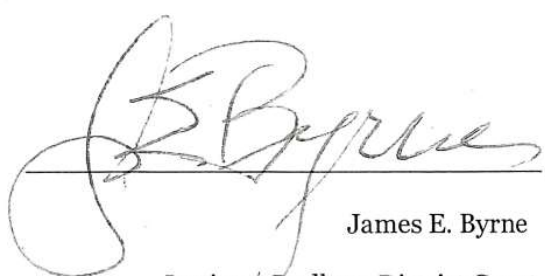
64. The Defendant had requested that this Court impose an amount of forfeiture if the Court found that forfeiture was in order. For the reasons discussed in the decisions in Bettencourt and Bisignani, this Court declines to do so.

ORDER

For the reasons set forth above, I rule and order as follows:

1. The pension forfeiture mandated in this case pursuant to G.L. c. 32, §15(4) is constitutional under the Excessive Fines Clause of both the 8th Amendment to the United States Constitution and Article 26 of the Massachusetts Declaration of Rights. The decision of the Defendant SRB is justified.
2. The mandated pension forfeiture does not constitute a violation of the "cruel or unusual" provision of Article 26.
3. The Plaintiff Gregory Raftery's Motion for Judgment on the Pleadings is DENIED.
4. The Defendant State Board of Retirement's Motion for Judgment on the Pleadings is ALLOWED. Judgment is to enter on behalf of the Defendant.

Dated: April 16, 2024



James E. Byrne
Justice – Dedham District Court

Section 15. (1) *Misappropriation of Funds.* — Any member who has been charged with the misappropriation of funds or property of any governmental unit in which or by which he is employed or was employed at the time of his retirement or termination of service, as the case may be, or of any system of which he is a member, and who files a written request therefor shall be granted a hearing by the board in accordance with the procedure set forth in subdivision (1) of section sixteen. If the board after the hearing finds the charges to be true, such member shall forfeit all rights under sections one to twenty-eight inclusive to a retirement allowance or to a return of his accumulated total deductions for himself and for his beneficiary, or to both, to the extent of the amount so found to be misappropriated and to the extent of the costs of the investigation, if any, as found by the board. He shall thereupon cease to be a member, except upon such terms and conditions as the board may determine.

(2) *Initiation of Proceedings.* — Proceedings under this section may be initiated by the board, by the head of the department, by the commission or board of the commonwealth or of any political subdivision thereof wherein the member is employed or was last employed if not then in service, or in a county by the county commissioners, in a city by the mayor, in a town by the board of selectmen, in the Massachusetts Department of Transportation by the authority, in the Massachusetts Housing Finance Agency by the agency, in the Massachusetts Port Authority by the authority, in the Greater Lawrence Sanitary District by the district, in the Blue Hills Regional School System by the system or in the Minuteman Regional Vocational Technical School District by the district. The procedure

set forth in subdivision (1) of section sixteen relative to delivery of copies, statement of service thereof, notice, hearing, if requested and the filing of a certificate of findings and decision, so far as applicable, shall apply to any proceedings under this section.

(3) *Forfeiture of Rights upon Conviction.* — In no event shall any member after final conviction of an offense involving the funds or property of a governmental unit or system referred to in subdivision (1) of this section, be entitled to receive a retirement allowance or a return of his accumulated total deductions under the provisions of sections one to twenty-eight inclusive, nor shall any beneficiary be entitled to receive any benefits under such provisions on account of such member, unless and until full restitution for any such misappropriation has been made.

(3A) *Forfeiture of rights upon conviction.* — In no event shall any member after final conviction of an offense set forth in section two of chapter two hundred and sixty-eight A or section twenty-five of chapter two hundred and sixty-five pertaining to police or licensing duties be entitled to receive a retirement allowance or a return of his accumulated total deductions under the provisions of sections one to twenty-eight, inclusive, nor shall any beneficiary be entitled to receive any benefits under such provisions on account of such member.

(4) *Forfeiture of pension upon misconduct.* — In no event shall any member after final conviction of a criminal offense involving violation of the laws applicable to his office or position, be entitled to receive a retirement allowance under the provisions of section one to twenty-eight, inclusive, nor shall any beneficiary be entitled to receive any benefits under such provisions on account of such member. The said member or his beneficiary shall receive, unless otherwise prohibited by law, a return of his accumulated total deductions; provided, however, that the rate of regular interest for the purpose of calculating accumulated total deductions shall be zero.

(5) If the attorney general or a district attorney becomes aware of a final conviction of a member of a retirement system under circumstances which may require forfeiture of the member's rights to a pension, retirement allowance or a return of his accumulated total deductions pursuant to this chapter, sections 58 or 59 of chapter 30 or section 25 of Chapter 268A, he shall immediately notify the commission of such conviction.

(6) If a member's final conviction of an offense results in a forfeiture of rights under this chapter, the member shall forfeit, and the board shall require the member to repay, all benefits received after the date of the offense of which the member was convicted.

(7) In no event shall any member be entitled to receive a retirement allowance under sections 1 to 28, inclusive, which is based upon a salary that was intentionally concealed from or intentionally misreported to the commonwealth, or any political subdivision, district or authority of the commonwealth, as determined by the commission. If a member intentionally concealed compensation from or intentionally misreported compensation to an entity to which the member was required to report the compensation, even if the reporting was not required for purposes of calculating the member's retirement allowance, the member's retirement allowance shall be based only upon the regular compensation actually reported to that entity or the amount reported to the board, whichever is lower. Unless otherwise prohibited by law, such member shall receive a return of any accumulated total deductions paid on amounts in excess of the compensation actually reported, but no interest shall be payable on the accumulated deductions returned to the member.

Section 2. Each police chief shall issue citation books to each permanent full-time police officer of his department whose duties may or will include traffic duty or traffic law enforcement, or directing or controlling traffic, and to such other officers as he at his discretion may determine. Each police chief shall obtain a receipt on a form approved by the registrar from such officer to whom a citation book has been issued. Each police chief shall also maintain citation books at police headquarters for the recording of automobile law violations by police officers to whom citation books have not been issued. The executive office of public safety and security shall promulgate rules and regulations establishing the standards required by this section for the issuance of electronic citations, including the proper equipment to be maintained by each department. In lieu of issuing citation books or in addition thereto, each police chief whose department issues citations electronically may grant authority to do so to each police officer of his or her department who has been trained pursuant to the regulations promulgated pursuant to this section.

Each police chief appointed by the trustees of the commonwealth's state universities and community colleges under section 22 of chapter 15A shall certify to the registrar, on or before January first of each year, that:

(1) the police officers appointed by the trustees at the state university or community college have been certified pursuant to chapter 6E;

(2) said officers have completed the annual in-service training required by the municipal police training committee established in section 116 of chapter 6;

(3) the state university or community college police department submits uniform crime reports to the Federal Bureau of Investigation;

(4) a memorandum of understanding has been entered into with the police chief of the municipality wherein the state university or community college is located outlining the policies and procedures for utilizing the municipality's booking and lock-up facilities, fingerprinting and breathalyzer equipment if the state university or community college police department does not provide booking and lock-up facilities, fingerprinting or breathalyzer equipment; and

(5) the state university or community college police department has policies and procedures in place for use of force, pursuit, arrest, search and seizure, racial profiling and motor vehicle law enforcement.

Nothing in this section, except the previous paragraph, shall limit the authority granted to the police chiefs and police officers at the state universities and community colleges under said section 22 of said chapter 15A or section 18 of chapter 73.

Notwithstanding the provisions of any general or special law, other than a provision of this chapter, to the contrary, any police officer assigned to traffic enforcement duty shall, whether or not the offense occurs within his presence, record the occurrence of automobile law violations upon a citation, filling out the citation and each copy thereof as soon as possible and as completely as possible and indicating thereon for each such violation whether the citation shall constitute a written warning and, if not, whether the violation is a criminal offense for which an application for a complaint as provided by subsection B of section three shall be made, whether the violation is a civil motor vehicle infraction which may be disposed of in accordance with subsection (A) of said section three, or whether the violator has been arrested in accordance with section twenty-one of chapter ninety. Said police officer shall inform the violator of the violation and shall give a copy of the citation to the violator. Such citation shall be signed, manually or electronically, by the police officer, and whenever a citation is given to the violator in person that fact shall be so certified by the police officer. If a written warning is indicated, no further action need be taken by the violator. No other form of notice, except as provided in this section, need be given to the violator.

A failure to give a copy of the citation to the violator at the time and place of the violation shall constitute a defense in any court proceeding for such violation, except where the violator could not have been stopped or where additional time was reasonably necessary to determine the nature of the violation or the identity of the violator, or where the court finds that a circumstance, not inconsistent with the purpose of this section to create a uniform,

simplified and non-criminal method for disposing of automobile law violations, justifies the failure. In such case the violation shall be recorded upon a citation as soon as possible after such violation and the citation shall be delivered to the violator or mailed to him at his residential or mail address or to the address appearing on his license or registration as appearing in registry of motor vehicles records. The provisions of the first sentence of this paragraph shall not apply to any complaint or indictment charging a violation of section twenty-four, twenty-four G or twenty-four L of chapter ninety, providing such complaint or indictment relates to a violation of automobile law which resulted in one or more deaths.

At or before the completion of his tour of duty, a police officer to whom a citation book has been issued and who has recorded the occurrence of an automobile law violation upon a citation shall deliver to his police chief or to the person duly authorized by said chief all remaining copies of such citation, duly signed, except the police officer's copy which shall be retained by the police officer; provided, however, that if a citation has been issued electronically, an electronic record shall be made and delivered to the police chief. If the police officer has directed that a written warning be issued, the part of the citation designated as the registry of motor vehicles record shall be forwarded forthwith by the police chief or person authorized by him to the registrar and shall be kept by the registrar in his main office.

If the police officer has not directed that a written warning be issued and has not arrested the violator, the police chief or a person duly authorized by him shall retain the police department copy of each citation or, if issued electronically, shall retain the police department report of the issuance, and not later than the end of the sixth business day after the date of the violation:

(a) in the case of citations issued from a citation book alleging only one or more civil motor vehicle infractions, shall cause all remaining copies of such citations to be mailed or delivered to the registrar or, in the case of citations issued electronically alleging a civil motor vehicle infractions, shall ensure that such citations are electronically forwarded as required; or

(b) in the case of citations alleging one or more criminal automobile law violations, shall cause all remaining copies or electronic records of such citations to be delivered to the clerk-magistrate of the district court for the judicial district where the violation occurred. Failure to comply with the provisions of this paragraph shall not constitute a defense to

any complaint or indictment charging a violation of section twenty-four, twenty-four G or twenty-four L of chapter ninety if such violation resulted in one or more deaths. Each clerk-magistrate shall maintain a record in the form prescribed by the chief justice of the district court department of such citations and shall notify the registrar of the disposition of such citations in accordance with the provisions of section twenty-seven of said chapter ninety.

If a citation issued from a citation book is spoiled, mutilated or voided, it shall be endorsed with a full explanation thereof by the police officer voiding such citation, and shall be returned to the registrar forthwith and shall be duly accounted for upon the audit sheet for the citation book from which said citation was removed. If any record of a citation issued electronically is spoiled, mutilated or voided, the record of such electronic citation, to the extent it can be recovered, shall be endorsed with a full explanation thereof by the police officer voiding such electronic citation and it shall be forwarded to the registrar in a manner approved by the registrar and the officer shall be prepared to account for the void in an electronic audit trail.

Part III COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES

Title IV CERTAIN WRITS AND PROCEEDINGS IN SPECIAL CASES

Chapter 249 AUDITA QUERELA, CERTIORARI, MANDAMUS AND QUO WARRANTO

Section 4 ACTION IN THE NATURE OF CERTIORARI; LIMITATION; JOINDER OF PARTY DEFENDANT; INJUNCTION; JUDGMENT

Section 4. A civil action in the nature of certiorari to correct errors in proceedings which are not according to the course of the common law, which proceedings are not otherwise reviewable by motion or by appeal, may be brought in the supreme judicial or superior court or, if the matter involves any right, title or interest in land, or arises under or involves the subdivision control law, the zoning act or municipal zoning, or subdivision ordinances, by–laws or regulations, in the land court or, if the matter involves fence viewers, in the district court. Such action shall be commenced within sixty days next after the proceeding complained of. Where such an action is brought against a body or officer exercising judicial or quasi-judicial functions to prevent the body or officer from proceeding in favor of another party, or is brought with relation to proceedings already taken, such other party may be joined as a party defendant by the plaintiff or on motion of the defendant body or officer or by application to intervene. Such other party may file a separate answer or adopt the pleadings of the body or officer. The court may at any time after the commencement of the action issue an injunction and order the record of the proceedings complained of brought before it. The court may enter judgment quashing or affirming such proceedings or such other judgment as justice may require.

18 USC 666: Theft or bribery concerning programs receiving Federal funds
Text contains those laws in effect on February 10, 2025

From Title 18-CRIMES AND CRIMINAL PROCEDURE
PART I-CRIMES
CHAPTER 31-EMBEZZLEMENT AND THEFT
Jump To:
Source Credit
Miscellaneous
Amendments

§666. Theft or bribery concerning programs receiving Federal funds

(a) Whoever, if the circumstance described in subsection (b) of this section exists-
(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof-
(A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that-
(i) is valued at $5,000 or more, and
(ii) is owned by, or is under the care, custody, or control of such organization, government, or agency; or

(B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of $5,000 or more; or

(2) corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more;

shall be fined under this title, imprisoned not more than 10 years, or both.
(b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.
(c) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.
(d) As used in this section-
(1) the term "agent" means a person authorized to act on behalf of another person or a government and, in the case of an organization or government, includes a servant or employee, and a partner, director, officer, manager, and representative;
(2) the term "government agency" means a subdivision of the executive, legislative, judicial, or other branch of government, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established, and subject to control, by a government or governments for the execution of a governmental or intergovernmental program;
(3) the term "local" means of or pertaining to a political subdivision within a State;
(4) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and
(5) the term "in any one-year period" means a continuous period that commences no earlier than twelve months before the commission of the offense or that ends no later than twelve months after the commission of the offense. Such period may include time both before and after the commission of the offense.

(Added Pub. L. 98–473, title II, §1104(a), Oct. 12, 1984, 98 Stat. 2143 ; amended Pub. L. 99–646, §59(a), Nov. 10, 1986, 100 Stat. 3612 ; Pub. L. 101–647, title XII, §§1205(d), 1209, Nov. 29, 1990, 104 Stat. 4831 , 4832; Pub. L. 103–322, title XXXIII, §330003(c), Sept. 13, 1994, 108 Stat. 2140 .)

Editorial Notes

Amendments

1994-Subsec. (d)(3) to (5). Pub. L. 103–322 struck out "and" at end of par. (3), substituted "; and" for the period at end of par. (4), and redesignated second par. (4) defining "in any one-year period" as (5).
1990-Subsec. (d)(4). Pub. L. 101–647, §1209, added par. (4) defining "in any one-year period".
Pub. L. 101–647, §1205(d), added par. (4) defining "State".
1986-Pub. L. 99–646, in amending section generally, made specific reference to applicability of section to agent of Indian tribal government or agency thereof, inserted provision that section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in usual course of business, struck out definition of term "organization", and otherwise revised structure of section.

18 USC 3571: Sentence of fine
Text contains those laws in effect on February 10, 2025

From Title 18-CRIMES AND CRIMINAL PROCEDURE
PART II-CRIMINAL PROCEDURE
CHAPTER 227-SENTENCES
SUBCHAPTER C-FINES
Jump To:

§3571. Sentence of fine

(a) In General.-A defendant who has been found guilty of an offense may be sentenced to pay a fine.

(b) Fines for Individuals.-Except as provided in subsection (e) of this section, an individual who has been found guilty of an offense may be fined not more than the greatest of-

(1) the amount specified in the law setting forth the offense;
(2) the applicable amount under subsection (d) of this section;
(3) for a felony, not more than $250,000;
(4) for a misdemeanor resulting in death, not more than $250,000;
(5) for a Class A misdemeanor that does not result in death, not more than $100,000;
(6) for a Class B or C misdemeanor that does not result in death, not more than $5,000; or
(7) for an infraction, not more than $5,000.

(c) Fines for Organizations.-Except as provided in subsection (e) of this section, an organization that has been found guilty of an offense may be fined not more than the greatest of-

(1) the amount specified in the law setting forth the offense;
(2) the applicable amount under subsection (d) of this section;
(3) for a felony, not more than $500,000;
(4) for a misdemeanor resulting in death, not more than $500,000;
(5) for a Class A misdemeanor that does not result in death, not more than $200,000;
(6) for a Class B or C misdemeanor that does not result in death, not more than $10,000; and
(7) for an infraction, not more than $10,000.

(d) Alternative Fine Based on Gain or Loss.-If any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

(e) Special Rule for Lower Fine Specified in Substantive Provision.-If a law setting forth an offense specifies no fine or a fine that is lower than the fine otherwise applicable under this section and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under this section, the defendant may not be fined more than the amount specified in the law setting forth the offense.

(Added Pub. L. 98–473, title II, §212(a)(2), Oct. 12, 1984, 98 Stat. 1995 ; amended Pub. L. 100–185, §6, Dec. 11, 1987, 101 Stat. 1280 .)

Editorial Notes

Prior Provisions

For a prior section 3571, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3551 of this title.

Amendments

1987-Pub. L. 100–185 amended section generally, revising and restating as subsecs. (a) to (e) provisions formerly contained in subsecs. (a) and (b).

Statutory Notes and Related Subsidiaries

Effective Date

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

Part IV	CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES
Title I	CRIMES AND PUNISHMENTS
Chapter 271	CRIMES AGAINST PUBLIC POLICY
Section 1	GAMING OR BETTING; FORFEITURE

Section 1. Whoever, on a prosecution commenced within eighteen months after the commission of the crime, is convicted of winning at one time or sitting, by gaming or betting on the sides or hands of those gaming, except as permitted under chapters 23K and 23N, money or goods to the value of five dollars or more, and of receiving the same or security therefor, shall forfeit double the value of such money or goods.

Part I ADMINISTRATION OF THE GOVERNMENT

Title XV REGULATION OF TRADE

Chapter 94C CONTROLLED SUBSTANCES ACT

Section 47 FORFEITURE OF PROPERTY

Section 47. (a) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:

(1) All controlled substances which have been manufactured, delivered, distributed, dispensed or acquired in violation of this chapter.

(2) All materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, dispensing, distributing, importing, or exporting any controlled substance in violation of this chapter.

(3) All conveyances, including aircraft, vehicles or vessels used, or intended for use, to transport, conceal, or otherwise facilitate the manufacture, dispensing, distribution of or possession with intent to manufacture, dispense or distribute, a controlled substance in violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two I, thirty-two J, or forty.

(4) All books, records, and research, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this chapter.

(5) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter, all proceeds traceable to such an exchange, including real estate and any other thing of value, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two I, thirty-two J, or forty.

(6) All drug paraphernalia.

(7) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements thereto, which is used in any manner or part, to commit or to facilitate the commission of a violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two I, thirty-two J or forty.

(8) All property which is used, or intended for use, as a container for property described in subparagraph (1) or (2).

(9) No forfeiture under this section shall extinguish a perfected security interest held by a creditor in a conveyance or in any real property at the time of the filing of the forfeiture action.

(b) Property subject to forfeiture under subparagraphs (1), (2), (4), (5), (6), (7) and (8) of subsection (a) shall, upon motion of the attorney general or district attorney, be declared forfeit by any court having jurisdiction over said property or having final jurisdiction over any

related criminal proceeding brought under any provision of this chapter. Property subject to forfeiture under subparagraph (1) of subsection (a) shall be destroyed, regardless of the final disposition of such related criminal proceeding, if any, unless the court for good cause shown orders otherwise.

(c) The court shall order forfeiture of all conveyances subject to the provisions of subparagraph (3) and of all real property subject to the provisions of subparagraph (7) of subsection (a) of this section, except as follows:

(1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited unless it shall appear that the owner or other person in charge of such conveyance was a consenting party of privy to a violation of this chapter.

(2) No conveyance shall be forfeited by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of the commonwealth, or of any state.

(3) No conveyance or real property shall be subject to forfeiture unless the owner thereof knew or should have known that such conveyance or real property was used in and for the business of unlawfully manufacturing, dispensing, or distributing controlled substances. Proof that the conveyance or real property was used to facilitate the unlawful dispensing, manufacturing, or distribution of, or possession with intent unlawfully to manufacture, dispense or distribute, controlled substances on three or more different dates shall be prima facie evidence that the

conveyance or real property was used in and for the business of unlawfully manufacturing, dispensing, or distributing controlled substances.

(4) No conveyance or real property used to facilitate the unlawful manufacturing, dispensing, or distribution of, or the possession with intent unlawfully to manufacture, dispense, or distribute marihuana or a substance, not itself a controlled substance, containing any marihuana shall be forfeited if the net weight of the substance so manufactured, dispensed, or distributed or possessed with intent to manufacture, dispense or distribute, is less than ten pounds in the aggregate.

(d) A district attorney or the attorney general may petition the superior court in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real property, moneys or other things of value subject to forfeiture under the provisions of subparagraphs (3), (5), and (7) of subsection (a). Such petition shall be filed in the court having jurisdiction over said conveyance, real property, monies or other things of value or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. In all such suits where the property is claimed by any person, other than the commonwealth, the commonwealth shall have the burden of proving to the court the existence of probable cause to institute the action, and any such claimant shall then have the burden of proving that the property is not forfeitable pursuant to subparagraph (3), (5), or (7) of said subsection (a). The owner of said conveyance or real property, or other person claiming thereunder shall have the burden of proof as to all exceptions set forth in subsections (c) and (i). The court shall order the commonwealth to give notice by certified or registered mail to the owner of said conveyance, real property, moneys or other things of value and to such

other persons as appear to have an interest therein, and the court shall promptly, but not less than two weeks after notice, hold a hearing on the petition. Upon the motion of the owner of said conveyance, real property, moneys or other things of value, the court may continue the hearing on the petition pending the outcome of any criminal trial related to the violation of this chapter. At such hearing the court shall hear evidence and make conclusions of law, and shall thereupon issue a final order, from which the parties shall have a right of appeal. In all such suits where a final order results in a forfeiture, said final order shall provide for disposition of said conveyance, real property, moneys or any other thing of value by the commonwealth or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising, and notice, and the balance thereof shall be distributed as further provided in this section.

The final order of the court shall provide that said moneys and the proceeds of any such sale shall be distributed equally between the prosecuting district attorney or attorney general and the city, town or state police department involved in the seizure. If more than one department was substantially involved in the seizure, the court having jurisdiction over the forfeiture proceeding shall distribute the fifty percent equitably among these departments.

There shall be established within the office of the state treasurer separate special law enforcement trust funds for each district attorney and for the attorney general. All such monies and proceeds received by any prosecuting district attorney or attorney general shall be deposited in such

a trust fund and shall then be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or such other law enforcement purposes as the district attorney or attorney general deems appropriate. The district attorney or attorney general may expend up to ten percent of the monies and proceeds for drug rehabilitation, drug education and other anti-drug or neighborhood crime watch programs which further law enforcement purposes. Any program seeking to be an eligible recipient of said funds shall file an annual audit report with the local district attorney and attorney general. Such report shall include, but not be limited to, a listing of the assets, liabilities, itemized expenditures, and board of directors of such program. Within ninety days of the close of the fiscal year, each district attorney and the attorney general shall file an annual report with the house and senate committees on ways and means on the use of the monies in the trust fund for the purposes of drug rehabilitation, drug education, and other anti-drug or neighborhood crime watch programs.

All such moneys and proceeds received by any police department shall be deposited in a special law enforcement trust fund and shall be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or to accomplish such other law enforcement purposes as the chief of police of such city or town, or the colonel of state police deems appropriate, but such funds shall not be considered a source of revenue to meet the operating needs of such department.

(e) Any officer, department, or agency having custody of any property subject to forfeiture under this chapter or having disposed of said property shall keep and maintain full and complete records showing from whom it received said property, under what authority it held or received or disposed of said property, to whom it delivered said property, the date and manner of destruction or disposition of said property, and the exact kinds, quantities and forms of said property. Said records shall be open to inspection by all federal and state officers charged with enforcement of federal and state drug control laws. Persons making final disposition or destruction of said property under court order shall report, under oath, to the court the exact circumstances of said disposition or destruction.

(f) (1) During the pendency of the proceedings the court may issue at the request of the commonwealth *ex parte* any preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought and to provide for its custody, including but not limited to an order that the commonwealth remove the property if possible, and safeguard it in a secure location in a reasonable fashion; that monies be deposited in an interest-bearing escrow account; and, that a substitute custodian be appointed to manage such property or a business enterprise. Property taken or detained under this section shall not be repleviable, but once seized shall be deemed to be lawfully in the custody of the commonwealth pending forfeiture, subject only to the orders and decrees of the court having jurisdiction thereof. Process for seizure of said property shall issue only upon a showing of probable cause, and the application therefor and the issuance, execution, and return thereof shall be subject to the provisions of chapter two hundred and seventy-six, so far as applicable.

(2) There shall be created within the division of capital asset management and maintenance an office of seized property management to which a district attorney or the attorney general may refer any real property, and any furnishings, equipment and related personal property located therein, for which seizure is sought. The office of seized property management shall be authorized to preserve and manage such property in a reasonable fashion and to dispose of such property upon a judgment ordering forfeiture issued pursuant to the provisions of subsection (d), and to enter into contracts to preserve, manage and dispose of such property. The office of seized property management may receive initial funding from the special law enforcement trust funds of the attorney general and each district attorney established pursuant to subsection (d) and shall subsequently be funded by a portion of the proceeds of each sale of such managed property to the extent provided as payment of reasonable expenses in subsection (d).

(g) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths may be seized by any police officer and summarily forfeited to the commonwealth.

(h) The failure, upon demand by a police officer of the person in occupancy or in control of land or premises upon which the species of plants are growing to produce an appropriate registration, or proof that he is a holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(i) The owner of any real property which is the principal domicile of the immediate family of the owner and which is subject to forfeiture under this section may file a petition for homestead exemption with the court having jurisdiction over such forfeiture. The court may, in its discretion, allow the petition exempting from forfeiture an amount allowed under section one of chapter one hundred and eighty-eight. The value of the balance of said principal domicile, if any, shall be forfeited as provided in this section. Such homestead exemption may be acquired on only one principal domicile for the benefit of the immediate family of the owner.

(j) A forfeiture proceeding affecting the title to real property or the use and occupation thereof or the buildings thereon shall not have any effect except against the parties thereto and persons having actual notice thereof, until a memorandum containing the names of the parties to such proceeding, the name of the town where the affected real property lies, and a description of such real property sufficiently accurate for identification is recorded in the registry of deeds for the county or district where the real property lies. At any time after a judgment on the merits, or after the discontinuance, dismissal or other final disposition is recorded by the court having jurisdiction over such matter, the clerk of such court shall issue a certificate of the fact of such judgment, discontinuance, dismissal or other final disposition, and such certificate shall be recorded in the registry in which the original memorandum recorded pursuant to this section was filed.

(k)(1) The attorney general, each district attorney and each police department for which the state treasurer has established a special law enforcement trust fund pursuant to subsection (d) shall file an annual report with the treasurer regarding all assets, monies and proceeds from assets seized pursuant to this section and held by such fund. The report

shall provide itemized accounting for all assets, monies and proceeds from assets within the following asset categories: cash, personal property, conveyances and real property, including any property disposed of by the office of seized property management. The report shall be filed not later than January 31 for the preceding calendar year and shall be a public record.

(2) The attorney general, each district attorney and each police department for which the state treasurer has established a special law enforcement trust fund pursuant to subsection (d) shall file an annual report with the treasurer regarding all expenditures therefrom, which shall include, but not be limited to, the following expense categories: personnel, contractors, equipment, training, private-public partnerships, inter-agency collaborations and community grants. The report shall be filed not later than January 31 for the preceding calendar year and shall be a public record.

(3) Annually, not later than March 15, the state treasurer shall file a report with the executive office of administration and finance and the house and senate committees on ways and means regarding the aggregate deposits, aggregate expenditures, and ending balances for each special law enforcement trust fund during the preceding calendar year. The reports shall be a public record.

Part I	ADMINISTRATION OF THE GOVERNMENT
Title II	EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH
Chapter 23K	THE MASSACHUSETTS GAMING COMMISSION E FEE OR TAX; PENALTIES.
Section 37	UNLAWFUL CONDUCT OR OPERATION OF GAME OR GAMING DEVICE IN VIOLATION OF CHAPTER; EMPLOYING OF UNLICENSED OR UNREGISTERED INDIVIDUALS; WORKING WITHOUT REQUIRED LICENSE OR REGISTRATION; PLACING OF GAME OR GAMING DEVICE INTO PLAY OR RECEIPT OF COMPENSATION WITHOUT PERMISSION OF COMMISSION; CONDUCT OR OPERATION OF GAME OR GAMING DEVICE UPON EXPIRED LICENSE; FAILURE TO EXCLUDE PERSONS PLACED ON EXCLUDED PERSONS LIST; FAILURE TO REPORT OR PAY LICENSE FEE OR TAX; PENALTIES

Section 37. (a) Whoever conducts or operates, or permits to be conducted or operated, any game or gaming device in violation of this chapter or the regulations adopted under this chapter shall be punished by imprisonment in the state prison for not more than 5 years or imprisonment in the house of correction for not more than 21/2 years, or by a fine not to exceed $25,000, or both, and in the case of a person other than a natural person, by a fine not to exceed $100,000.

(b) Whoever employs, or continues to employ, an individual in a position, the duties of which require a license or registration under this chapter, who is not so licensed or registered, shall be punished by imprisonment in the house of correction for not more than 6 months or by a fine not to exceed $10,000, or both, and in the case of a person other than a natural person, by a fine not to exceed $100,000.

(c) Whoever works or is employed in a position, the duties of which require licensing or registration under this chapter, without the required license or registration, shall be punished by imprisonment in the house of correction for not more than 6 months or a fine not to exceed $10,000, or both.

(d) A gaming licensee who, without the permission of the commission: (i) places a game or gaming device into play or displays a game or gaming device in a gaming establishment; or (ii) receives, directly or indirectly, any compensation or reward or any percentage or share of the revenue for keeping, running or carrying on a game, or owning the real property upon, or the location within which any game occurs, shall be punished by imprisonment in the house of correction for not more than 21/2 years or by a fine not to exceed $25,000, or both, and in the case of a person other than a natural person, by a fine not to exceed $100,000.

(e) Whoever conducts or operates any game or gaming device after the person's gaming license has expired and prior to the actual renewal of the gaming license shall be punished by imprisonment in the house of correction for not more than 11/2 years or a fine not to exceed $25,000, or both, and in the case of a person other than a natural person, by a fine not to exceed $100,000.

(f) A gaming licensee who knowingly fails to exclude from the licensee's gaming establishment any person placed by the commission on the list of excluded persons shall be punished by a fine not to exceed $5,000 or by imprisonment in the house of correction for not more than 1 year, or both, and in the case of a person other than a natural person, by a fine not to exceed $100,000.

(g) Whoever willfully: (i) fails to report, pay or truthfully account for and pay over a license fee or tax imposed by this chapter or by the regulations adopted under this chapter; or (ii) evades or defeats, or attempts to evade or defeat, a license fee or tax or payment of a license fee or tax shall be punished by imprisonment in the state prison for not more than 5 years or in the house of correction for not more than 21/2 years or a fine not to exceed $100,000, or both, and in the case of a person other than a natural person, by a fine not to exceed $5,000,000.

Part I ADMINISTRATION OF THE GOVERNMENT

Title XIX AGRICULTURE AND CONSERVATION

Chapter 132A STATE RECREATION AREAS OUTSIDE OF THE METROPOLITAN PARKS DISTRICT

Section 7A CHIEF PARK RANGER; PARK RANGERS; VIOLATIONS OF ENVIRONMENTAL REGULATIONS; NON-CRIMINAL DISPOSITION

Section 7A. There is established within the department of environmental management, division of forest and parks, the position titles of chief park ranger and park ranger, provisions of the General Laws or any special law to the contrary notwithstanding. Said positions shall not be eligible for the provisions of Group (4) retirement benefits.

The chief park ranger and park rangers appointed and employed by the department of environmental management, when appointed deputy environmental police officers, shall enforce all regulations promulgated pursuant to section four A of chapter twenty-one, and section seven of chapter one hundred and thirty-two A and section sixteen of chapter two hundred and seventy, shall search for lost or missing persons or department property, and shall assist the bureau of fire control in both suppression and detection of fires.

A park ranger who has been appointed as a deputy environmental police officer who observes any violation of regulations promulgated pursuant to said section four A of said chapter twenty-one, and said section seven of said chapter one hundred and thirty-two A, may request the offender to state his name and address. Whoever upon such request refuses to state his name and address may be arrested without a warrant and shall be punished by a fine of not less than fifty dollars and not more than one hundred dollars. Said ranger may, as alternative to instituting criminal proceedings, give to the offender a written notice to appear before the clerk of the district court having jurisdiction at any time during office hours within twenty-one days after the date of such violation. Said notice shall contain the name and address of the offender, offense charged, signature of the officer and option of the offender acknowledging that the notice has been received. The clerk of courts shall maintain a separate docket of all such notices to appear.

If any person notified to appear before the clerk of the district court fails to appear and pay the fine provided hereunder or, having appeared, desires not to avail himself of the procedure for the non-criminal disposition of the case, the clerk shall notify the ranger concerned, who shall forthwith make a criminal complaint.

Any person notified to appear before the clerk of the district court for a violation of said section four A of said chapter twenty-one, and of said section seven of said chapter one hundred and thirty-two A, may so appear within the time specified and pay a fine of fifty dollars. Notwithstanding any other provision of law, all fines and penalties recovered for violation of rules and regulations made under authority of this section shall be accounted for by the clerk of the court and forwarded

to the department of environmental management to be deposited as revenue and shall be applicable to the department's retained revenue account.

Park ranger may, through independent contractors, remove from any area or way subject to their jurisdiction or control and store in any convenient place any vehicle parked or standing thereon in violation of any law, or rule and regulation, except a vehicle owned by the commonwealth or a political subdivision or by the United States or an instrumentality thereof or registered by a member of a foreign diplomatic corps or by a foreign consular officer who is not a citizen of the United States and bearing a distinctive number plate or otherwise conspicuously marked as so owned or registered; provided however, that such removal and storage shall be at no expense to and without liability on the part of the commonwealth. Liability may be imposed for the reasonable cost of the removal, and for the storage charges, if any, resulting upon the owner of the vehicle.

Part I	ADMINISTRATION OF THE GOVERNMENT
Title XXI	LABOR AND INDUSTRIES
Chapter 149	LABOR AND INDUSTRIES
Section 27C	PENALTIES FOR VIOLATIONS OF CERTAIN SECTIONS BY EMPLOYERS, CONTRACTORS, SUBCONTRACTORS OR THEIR EMPLOYEES

Section 27C. (a)(1) Any employer, contractor or subcontractor, or any officer, agent, superintendent, foreman, or employee thereof, or staffing agency or work site employer who willfully violates any provision of section 26, 27, 27A, 27B, 27F, 27G, 27H, 148, 148A, 148B or 159C or section 1A, 1B or 19 of chapter 151, shall be punished by a fine of not more than $25,000 or by imprisonment for not more than one year for a first offense, or by both such fine and imprisonment and for a subsequent willful offense a fine of not more than $50,000, or by imprisonment for not more than two years, or by both such fine and such imprisonment.

(2) Any employer, contractor or subcontractor, or any officer, agent, superintendent, foreman or employee thereof, or staffing agency or work site employer who without a willful intent to do so, violates any provision of section 26, 27, 27A, 27B, 27F, 27G, 27H, 148, 148A, 148B or 159C or section 1A, 1B or 19 of chapter 151, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than six months for

a first offense, and for a subsequent offense by a fine of not more than $25,000 or by imprisonment for not more than one year, or by both such fine and such imprisonment. A complaint or indictment hereunder or under the provisions of the first paragraph may be sought either in the county where the work was performed or in the county where the employer, contractor, or subcontractor has a principal place of business. In the case of an employer, contractor, or subcontractor who has his principal place of business outside the commonwealth, a complaint or indictment may be sought either in the county where the work was performed or in Suffolk county.

(3) Any contractor or subcontractor convicted of willfully violating any provision of section 26, 27, 27A, 27B, 27F, 27G, 27H or 148B shall, in addition to any criminal penalty imposed, be prohibited from contracting, directly or indirectly, with the commonwealth or any of its agencies or political subdivisions for the construction of any public building or other public works, or from performing any work on the same as a contractor or subcontractor, for a period of five years from the date of such conviction. Any contractor or subcontractor convicted of violating any provision of section 26, 27, 27A, 27B, 27F, 27G, 27H or 148B shall, in addition to any criminal penalty imposed, be prohibited from contracting, directly or indirectly, with the commonwealth or any of its agencies, authorities or political subdivisions for the construction of any public building or other public works or from performing any work on the same as a contractor or subcontractor, for a period not to exceed six months from the date of such conviction for a first offense and up to three years from the date of conviction for subsequent offense. After final conviction and disposition of a violation pursuant to this paragraph in any court, the clerk of said court shall send a notice of such conviction to the attorney

general, who shall publish written notice to all departments and agencies of the commonwealth which contract for public construction and to the appropriate authorities of counties, authorities, cities and towns that such person is prohibited from contracting, directly or indirectly, with the commonwealth or any of its authorities or political subdivisions for the period of time required under this paragraph. The attorney general may take such action as may be necessary to enforce the provisions of this paragraph, and the superior court shall have jurisdiction to enjoin or invalidate any contract award made in violation of this paragraph.

(b)(1) As an alternative to initiating criminal proceedings pursuant to subsection (a), the attorney general may issue a written warning or a civil citation. For each violation, a separate citation may be issued requiring any or all of the following: that the infraction be rectified, that restitution be made to the aggrieved party, or that a civil penalty of not more than $25,000 for each violation be paid to the commonwealth, within 21 days of the date of issuance of such citation. For the purposes of this paragraph, each failure to pay an employee the appropriate rate or prevailing rate of pay for any pay period may be deemed a separate violation, and the pay period shall be a minimum of 40 hours unless such employee has worked fewer than 40 hours during that week.

(2) Notwithstanding the foregoing, the maximum civil penalty that may be imposed upon any employer, contractor or subcontractor, who has not previously been either criminally convicted of a violation of the provisions of this chapter or chapter 151 or issued a citation hereunder, shall be no more than $15,000, except that in instances in which the attorney general determines that the employer, contractor or subcontractor lacked specific intent to violate the provisions of this chapter or said chapter 151, the maximum civil penalty for such an

employer, contractor or subcontractor who has not previously been either criminally convicted of a violation of the provisions of this chapter or said chapter 151 or issued a citation hereunder shall be not more than $7,500. In determining the amount of any civil penalty to be assessed hereunder, said attorney general shall take into consideration previous violations of this chapter or said chapter 151 by the employer, the intent by such employer to violate the provisions of this chapter or said chapter 151, the number of employees affected by the present violation or violations, the monetary extent of the alleged violations, and the total monetary amount of the public contract or payroll involved.

(3) In the case of a citation for violating any provision of section 26, 27, 27A, 27B, 27F, 27G, 27H or 148B, the attorney general may also order that a bond in an amount necessary to rectify the infraction and to ensure compliance with sections 26 to 27H, inclusive, and with other provisions of law, be filed with said attorney general, conditioned upon payment of said rate or rates of wages, including payments to health and welfare funds and pension funds, or the equivalent payment in wages, on said public works to any person performing work within classifications as determined by the commissioner. Upon any failure to comply with the requirements set forth in a citation, said attorney general may order the cessation of all or the relevant portion of the work on the project site. In addition, any contractor or subcontractor failing to comply with the requirements set forth in a citation or order, shall be prohibited from contracting, directly or indirectly, with the commonwealth or any of its agencies or political subdivisions for the construction of any public building or other public works, or from performing any work on the same as a contractor or subcontractor, for a period of one year from the date of issuance of such citation or order. Any contractor or subcontractor who

receives three citations or orders occurring on three different occasions, each of which includes a finding of intent, within a three year period shall automatically be debarred for a period of two years from the date of issuance of the third such citation or order or a final court order, whichever is later. Any debarment hereunder shall also apply to all affiliates of the contractor or subcontractor, as well as any successor company or corporation that said attorney general, upon investigation, determines to not have a true independent existence apart from that of the violating contractor or subcontractor.

(4) Any person aggrieved by any citation or order issued pursuant to this subsection may appeal said citation or order by filing a notice of appeal with the attorney general and the division of administrative law appeals within ten days of the receipt of the citation or order. Any such appellant shall be granted a hearing before the division of administrative law appeals in accordance with chapter 30A. The hearing officer may affirm or if the aggrieved person demonstrates by a preponderance of evidence that the citation or order was erroneously issued, vacate, or modify the citation or order. Any person aggrieved by a decision of the hearing officer may file an appeal in the superior court pursuant to the provisions of said chapter 30A.

(5) In cases when the decision of the hearing officer of the division of administrative law appeals is to debar or suspend the employer, said suspension or debarment shall not take effect until 30 days after the issuance of such order; provided, however, that the employer shall not bid on the construction of any public work or building during the aforementioned 30 day period unless the superior court temporarily enjoins the order of debarment or suspension.

(6) If any person shall fail to comply with the requirements set forth in any order or citation issued by the attorney general hereunder, or shall fail to pay any civil penalty or restitution imposed thereby within 21 days of the date of issuance of such citation or order or within 30 days following the decision of the hearing officer if such citation or order has been appealed, excluding any time during which judicial review of the hearing officer's decision remains pending, said attorney general may apply for a criminal complaint or seek indictment for the violation of the appropriate section of this chapter.

(7) Notwithstanding the provisions of paragraph (6), if any civil penalty imposed by a citation or order issued by the attorney general remains unpaid beyond the time period specified for payment in said paragraph (6), such penalty amount and any restitution order, together with interest thereon at the rate of 18 per cent per annum, shall be a lien upon the real estate and personal property of the person who has failed to pay such penalty. Such lien shall take effect by operation of law on the day immediately following the due date for payment of such fine, and, unless dissolved by payment, shall as of said date be considered a tax due and owing to the commonwealth, which may be collected through the procedures provided for by chapter 62C. In addition to the foregoing, no officer of any corporation which has failed to pay any such penalty may incorporate or serve as an officer in any corporation which did not have a legal existence as of the date said fine became due and owing to the commonwealth.

(c) Civil and criminal penalties pursuant to this section shall apply to employers solely with respect to their wage and benefit obligations to their own employees.

Part I ADMINISTRATION OF THE GOVERNMENT

Title XX PUBLIC SAFETY AND GOOD ORDER

Chapter 138 ALCOHOLIC LIQUORS

Section 45 SEARCH OF PREMISES; SEIZURE OF ALCOHOLIC BEVERAGES

Section 45. The officer to whom the warrant is committed shall search the premises and seize the alcoholic beverages described in the warrant, the casks or other vessels in which the same are contained, and all implements of sale and furniture used or kept and provided to be used in the illegal keeping or sale of such beverages, if they are found in or upon said premises, and shall convey the same to some place of security, where he shall keep the beverages and vessels until final action is had thereon.

Part I ADMINISTRATION OF THE GOVERNMENT

Title XX PUBLIC SAFETY AND GOOD ORDER

Chapter 138 ALCOHOLIC LIQUORS

Section 46 SEARCHES AND SEIZURES WITHOUT WARRANT

Section 46. A sheriff, deputy sheriff, city marshal, chief of police, deputy chief of police, deputy or assistant marshal, police officer, including a state police officer, or constable who, without a search warrant duly committed to him, searches for or seizes alcoholic beverages in a dwelling shall be punished by a fine of not less than five nor more than one hundred dollars.

Part I	ADMINISTRATION OF THE GOVERNMENT
Title XX	PUBLIC SAFETY AND GOOD ORDER
Chapter 138	ALCOHOLIC LIQUORS
Section 47	NOTICE TO KEEPER OF ALCOHOLIC BEVERAGES TO APPEAR AND ANSWER COMPLAINT; FORFEITURE OF SEIZED BEVERAGES

Section 47. The court before whom the warrant is returned shall, within twenty-four hours after the seizure thereunder of the alcoholic beverages and the vessels containing them, issue a notice, under seal, and signed by the justice or the clerk of said court, commanding the person complained against as the keeper of the beverages seized and all other persons who claim any interest therein or in the casks or vessels containing the same to appear before said court, at a time and place therein named, to answer to said complaint and show cause why such beverages and the vessels containing them should not be forfeited.

Part I ADMINISTRATION OF THE GOVERNMENT

Title XX PUBLIC SAFETY AND GOOD ORDER

Chapter 138 ALCOHOLIC LIQUORS

Section 48 NOTICE; CONTENTS; SERVICE

Section 48. The notice shall contain a description of the number and kind of vessels, the quantity and kind of alcoholic beverages seized, as nearly as may be, and shall state when and where they were seized. It shall, not less than fourteen days before the time appointed for the trial, be served by a sheriff, deputy sheriff, constable or police officer upon the person charged with being the keeper thereof by leaving an attested copy thereof with him personally or at his usual place of abode, if he is an inhabitant of the commonwealth, and by posting an attested copy on the building in which the beverages were seized, if they were found in a building; otherwise in a public place in the city or town in which the beverages were seized.

Part I ADMINISTRATION OF THE GOVERNMENT

Title XX PUBLIC SAFETY AND GOOD ORDER

Chapter 138 ALCOHOLIC LIQUORS

Section 49 POSTPONEMENT OF TRIAL

Section 49. If, at the time appointed for trial, said notice has not been duly served, or other sufficient cause appears, the trial may be postponed to some other day and place, and such further notice issued as shall supply any defect in the previous notice; and time and opportunity for trial and defence shall be given to persons interested.

Part I	ADMINISTRATION OF THE GOVERNMENT
Title XX	PUBLIC SAFETY AND GOOD ORDER
Chapter 138	ALCOHOLIC LIQUORS
Section 50	ADMISSION OF CLAIMANT OF ALCOHOLIC BEVERAGES AS PARTY TO TRIAL; FORFEITURE OF ALCOHOLIC BEVERAGES UNLAWFULLY KEPT; SALE OF MOTOR VEHICLE HELD TO BE IMPLEMENT OR CONTAINER OF ALCOHOLIC BEVERAGES

Section 50. At the time and place designated in the notice, the person complained against, or any person claiming an interest in the alcoholic beverages and vessel seized, or any part thereof, may appear and make his claim verbally or in writing, and a record of his appearance and claim shall be made, and he shall be admitted as a party to the trial. Whether a claim as aforesaid is made or not, the court shall proceed to try, hear and determine the allegations of such complaint, and whether said beverages and vessels, or any part thereof, are forfeited. If it appears that the beverages, or any part thereof, were at the time of making the complaint owned or kept by the person alleged therein for the purpose of being sold in violation of law, the court shall render judgment that such and so much of the beverages so seized as were so unlawfully kept, and the vessels in which they are contained, shall, except as hereinafter provided, be forfeited to the commonwealth. If a motor vehicle is seized under the provisions of this chapter and is held to be a container or implement of

sale of alcoholic beverages contrary to law, the court shall, unless good cause to the contrary is shown, order a sale of such motor vehicle by public auction and the officer making the sale, after deducting the expense of keeping the motor vehicle, the fee for the seizure and the cost of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise, at said trial or in other proceedings brought for said purpose, as being bona fide and as having been created without the lienor having any notice that such motor vehicle was being used or was to be used as a container or implement of sale of alcoholic beverages contrary to law. The balance, if any, of the proceeds of the sale shall be forfeited to the commonwealth and shall be paid by said officer into its treasury. All liens against any motor vehicle sold under the provisions of this section shall be transferred from said motor vehicle to the proceeds of its sale.

United States Code Annotated
Title 26. Internal Revenue Code (Refs & Annos)
Subtitle F. Procedure and Administration (Refs & Annos)
Chapter 68. Additions to the Tax, Additional Amounts, and Assessable Penalties
Subchapter A. Additions to the Tax and Additional Amounts
Part I. General Provisions

26 U.S.C.A. § 6654, I.R.C. § 6654

§ 6654. Failure by individual to pay estimated income tax

Currentness

(a) Addition to the tax.--Except as otherwise provided in this section, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax under chapter 1, the tax under chapter 2, and the tax under chapter 2A for the taxable year an amount determined by applying--

(1) the underpayment rate established under section 6621,

(2) to the amount of the underpayment,

(3) for the period of the underpayment.

(b) Amount of underpayment; period of underpayment.--For purposes of subsection (a)--

(1) Amount.--The amount of the underpayment shall be the excess of--

(A) the required installment, over

(B) the amount (if any) of the installment paid on or before the due date for the installment.

(2) Period of underpayment.--The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier--

(A) the 15th day of the 4th month following the close of the taxable year, or

(B) with respect to any portion of the underpayment, the date on which such portion is paid.

(3) Order of crediting payments.--For purposes of paragraph (2)(B), a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(c) Number of required installments; due dates.--For purposes of this section--

(1) Payable in 4 installments.--There shall be 4 required installments for each taxable year.

(2) Time for payment of installments.--

In the case of the following required installments:	**The due date is:**
1st	April 15
2nd	June 15
3rd	September 15
4th	January 15 of the following taxable year.

(d) Amount of required installments.--For purposes of this section--

(1) Amount.--

(A) In general.--Except as provided in paragraph (2), the amount of any required installment shall be 25 percent of the required annual payment.

(B) Required annual payment.--For purposes of subparagraph (A), the term "required annual payment" means the lesser of--

(i) 90 percent of the tax shown on the return for the taxable year (or, if no return is filed, 90 percent of the tax for such year), or

(ii) 100 percent of the tax shown on the return of the individual for the preceding taxable year.

Clause (ii) shall not apply if the preceding taxable year was not a taxable year of 12 months or if the individual did not file a return for such preceding taxable year.

(C) Limitation on use of preceding year's tax.--

(i) In general.--If the adjusted gross income shown on the return of the individual for the preceding taxable year beginning in any calendar year exceeds $150,000, clause (ii) of subparagraph (B) shall be applied by substituting "110 percent" for "100 percent".

(ii) Separate returns.--In the case of a married individual (within the meaning of section 7703) who files a separate return for the taxable year for which the amount of the installment is being determined, clause (i) shall be applied by substituting "$75,000" for "$150,000".

(iii) Special rule.--In the case of an estate or trust, adjusted gross income shall be determined as provided in section 67(e).

(2) Lower required installment where annualized income installment is less than amount determined under paragraph (1).--

(A) In general.--In the case of any required installment, if the individual establishes that the annualized income installment is less than the amount determined under paragraph (1)--

(i) the amount of such required installment shall be the annualized income installment, and

(ii) any reduction in a required installment resulting from the application of this subparagraph shall be recaptured by increasing the amount of the next required installment determined under paragraph (1) by the amount of such reduction (and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured under this clause).

(B) Determination of annualized income installment.--In the case of any required installment, the annualized income installment is the excess (if any) of--

(i) an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income, alternative minimum taxable income, and adjusted self-employment income for months in the taxable year ending before the due date for the installment, over

(ii) the aggregate amount of any prior required installments for the taxable year.

(C) Special rules.--For purposes of this paragraph--

(i) Annualization.--The taxable income, alternative minimum taxable income, and adjusted self-employment income shall be placed on an annualized basis under regulations prescribed by the Secretary.

(ii) Applicable percentage.--

In the case of the following required installments:	The applicable percentage is:
1st	22.5
2nd	45
3rd	67.5
4th	90.

(iii) Adjusted self-employment income.--The term "adjusted self-employment income" means self-employment income (as defined in section 1402(b)); except that section 1402(b) shall be applied by placing wages (within the meaning of section 1402(b)) for months in the taxable year ending before the due date for the installment on an annualized basis consistent with clause (i).

(D) Treatment of subpart F income.--

(i) In general.--Any amounts required to be included in gross income under section 951(a) (and credits properly allocable thereto) shall be taken into account in computing any annualized income installment under subparagraph (B) in a manner similar to the manner under which partnership income inclusions (and credits properly allocable thereto) are taken into account.

(ii) Prior year safe harbor.--If a taxpayer elects to have this clause apply to any taxable year--

(I) clause (i) shall not apply, and

(II) for purposes of computing any annualized income installment for such taxable year, the taxpayer shall be treated as having received ratably during such taxable year items of income and credit described in clause (i) in an amount equal to the amount of such items shown on the return of the taxpayer for the preceding taxable year (the second preceding taxable year in the case of the first and second required installments for such taxable year).

(e) Exceptions.--

(1) Where tax is small amount.--No addition to tax shall be imposed under subsection (a) for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax), reduced by the credit allowable under section 31, is less than $1,000.

(2) Where no tax liability for preceding taxable year.--No addition to tax shall be imposed under subsection (a) for any taxable year if--

(A) the preceding taxable year was a taxable year of 12 months,

(B) the individual did not have any liability for tax for the preceding taxable year, and

(C) the individual was a citizen or resident of the United States throughout the preceding taxable year.

(3) Waiver in certain cases.--

(A) In general.--No addition to tax shall be imposed under subsection (a) with respect to any underpayment to the extent the Secretary determines that by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.

(B) Newly retired or disabled individuals.--No addition to tax shall be imposed under subsection (a) with respect to any underpayment if the Secretary determines that--

(i) the taxpayer--

(I) retired after having attained age 62, or

(II) became disabled,

in the taxable year for which estimated payments were required to be made or in the taxable year preceding such taxable year, and

(ii) such underpayment was due to reasonable cause and not to willful neglect.

(f) Tax computed after application of credits against tax.--For purposes of this section, the term "tax" means--

(1) the tax imposed by chapter 1 (other than any increase in such tax by reason of section 143(m)), plus

(2) the tax imposed by chapter 2, plus

(3) the tax imposed by chapter 2A, minus

(4) the credits against tax provided by part IV of subchapter A of chapter 1, other than the credit against tax provided by section 31 (relating to tax withheld on wages).

(g) Application of section in case of tax withheld on wages.--

(1) In general.--For purposes of applying this section, the amount of the credit allowed under section 31 for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed paid on each due date for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(2) Separate application.--The taxpayer may apply paragraph (1) separately with respect to--

(A) wage withholding, and

(B) all other amounts withheld for which credit is allowed under section 31.

(h) Special rule where return filed on or before January 31.--If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, then no addition to tax shall be imposed under subsection (a) with respect to any underpayment of the 4th required installment for the taxable year.

(i) Special rules for farmers and fishermen.--For purposes of this section--

(1) In general.--If an individual is a farmer or fisherman for any taxable year--

(A) there shall be only 1 required installment for the taxable year,

(B) the due date for such installment shall be January 15 of the following taxable year,

(C) the amount of such installment shall be equal to the required annual payment determined under subsection (d)(1)(B) by substituting "66 $^{2}/_{3}$ percent" for "90 percent" and without regard to subparagraph (C) of subsection (d)(1), and

(D) subsection (h) shall be applied--

(i) by substituting "March 1" for "January 31", and

(ii) by treating the required installment described in subparagraph (A) of this paragraph as the 4th required installment.

(2) Farmer or fisherman defined.--An individual is a farmer or fisherman for any taxable year if--

(A) the individual's gross income from farming or fishing (including oyster farming) for the taxable year is at least 66 $^{2}/_{3}$ percent of the total gross income from all sources for the taxable year, or

(B) such individual's gross income from farming or fishing (including oyster farming) shown on the return of the individual for the preceding taxable year is at least 66 $^{2}/_{3}$ percent of the total gross income from all sources shown on such return.

(j) Special rules for nonresident aliens.--In the case of a nonresident alien described in section 6072(c):

(1) Payable in 3 installments.--There shall be 3 required installments for the taxable year.

(2) Time for payment of installments.--The due dates for required installments under this subsection shall be determined under the following table:

In the case of the following required installments:	The due date is:
1st	June 15
2nd	September 15
3rd	January 15 of the following taxable year.

(3) Amount of required installments.--

(A) First required installment.--In the case of the first required installment, subsection (d) shall be applied by substituting "50 percent" for "25 percent" in subsection (d)(1)(A).

(B) Determination of applicable percentage.--The applicable percentage for purposes of subsection (d)(2) shall be determined under the following table:

In the case of the following required installments:	The applicable percentage is:
1st	45
2nd	67.5
3rd	90.

(k) Fiscal years and short years.--

(1) Fiscal years.--In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

(2) Short taxable year.--This section shall be applied to taxable years of less than 12 months in accordance with regulations prescribed by the Secretary.

(l) Estates and trusts.--

(1) In general.--Except as otherwise provided in this subsection, this section shall apply to any estate or trust.

(2) Exception for estates and certain trusts.--With respect to any taxable year ending before the date 2 years after the date of the decedent's death, this section shall not apply to--

(A) the estate of such decedent, or

(B) any trust--

(i) all of which was treated (under subpart E of part I of subchapter J of chapter 1) as owned by the decedent, and

(ii) to which the residue of the decedent's estate will pass under his will (or, if no will is admitted to probate, which is the trust primarily responsible for paying debts, taxes, and expenses of administration).

(3) Exception for charitable trusts and private foundations.--This section shall not apply to any trust which is subject to the tax imposed by section 511 or which is a private foundation.

(4) Special rule for annualizations.--In the case of any estate or trust to which this section applies, subsection (d)(2)(B)(i) shall be applied by substituting "ending before the date 1 month before the due date for the installment" for "ending before the due date for the installment".

(m) Special rule for Medicare tax.--For purposes of this section, the tax imposed under section 3101(b)(2) (to the extent not withheld) shall be treated as a tax imposed under chapter 2.

(n) Regulations.--The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 823; Pub.L. 87-682, § 1(a)(4), Sept. 25, 1962, 76 Stat. 575; Pub.L. 89-368, Title I, §§ 102(b)(1) to (3), 103(a), Mar. 15, 1966, 80 Stat. 62, 64; Pub.L. 91-172, Title III, § 301(b)(13), Dec. 30, 1969, 83 Stat. 586; Pub.L. 92-5, Title II, § 203(b)(7), Mar. 17, 1971, 85 Stat. 11; Pub.L. 92-336, Title II, § 203(b)(7), July 1, 1972, 86 Stat. 420; Pub.L. 93-66, Title II, § 203(b)(7), (d), July 9, 1973, 87 Stat. 153; Pub.L. 93-233, § 5(b)(7), (d), Dec. 31, 1973, 87 Stat. 954; Pub.L. 93-625, § 7(c), Jan. 3, 1975, 88 Stat. 2115; Pub.L. 94-455, Title XIX, § 1906(a)(35), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1829, 1834; Pub.L. 95-30, Title I, § 102(b)(16), May 23, 1977, 91 Stat. 139; Pub.L. 95-600, Title IV, § 421(e)(9), Nov. 6, 1978, 92 Stat. 2877; Pub.L. 97-34, Title VI, § 601(a)(6)(A), Title VII, § 725(b), (c)(5), Aug. 13, 1981, 95 Stat. 336, 346; Pub.L. 97-248, Title

II, § 201(d)(7), formerly § 201(c)(7), Title III, §§ 307(a)(14), 308(a), 328(a), Sept. 3, 1982, 96 Stat. 420, 590, 618; renumbered § 201(d)(7) and amended Pub.L. 97-448, Title I, §§ 106(a)(4)(C), 107(c)(1), Title II, § 201(j)(3), Title III, § 306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2390, 2391, 2396, 2400; Pub.L. 98-67, Title I, § 102(a), Aug. 5, 1983, 97 Stat. 369; Pub.L. 98-369, Div. A, Title IV, § 411, July 18, 1984, 98 Stat. 788; Pub.L. 99-514, Title XIV, § 1404(a), Title XV, §§ 1511(c)(14), 1541(a), (b), Title XVIII, § 1841, Oct. 22, 1986, 100 Stat. 2713, 2745, 2751, 2852; Pub.L. 100-418, Title I, § 1941(b)(6)(A), Aug. 23, 1988, 102 Stat. 1324; Pub.L. 100-647, Title I, § 1014(d)(1), (2), Title IV, § 4005(g)(5), Nov. 10, 1988, 102 Stat. 3560, 3651; Pub.L. 101-239, Title VII, § 7811(j)(5), (6), Dec. 19, 1989, 103 Stat. 2411, 2412; Pub.L. 102-164, Title IV, § 403(a), (b), Nov. 15, 1991, 105 Stat. 1062, 1064; Pub.L. 103-66, Title XIII, § 13214(a), (b), Aug. 10, 1993, 107 Stat. 475; Pub.L. 103-465, Title VII, § 711(b), Dec. 8, 1994, 108 Stat. 4998; Pub.L. 105-34, Title X, § 1091(a), Title XII, § 1202(a), Aug. 5, 1997, 111 Stat. 962, 994; Pub.L. 105-277, Div. J, Title II, § 2003(a), Oct. 21, 1998, 112 Stat. 2681-901; Pub.L. 106-170, Title V, § 531(a), Dec. 17, 1999, 113 Stat. 1928; Pub.L. 111-5, Div. B, Title I, § 1212, Feb. 17, 2009, 123 Stat. 336; Pub.L. 111-152, Title I, § 1402(a)(2), (b)(2), Mar. 30, 2010, 124 Stat. 1062, 1063; Pub.L. 115-141, Div. U, Title IV, § 401(a)(301), (302), (b)(48), (49), (d)(1)(D)(xix), Mar. 23, 2018, 132 Stat. 1199, 1204, 1208.)

Notes of Decisions (70)

26 U.S.C.A. § 6654, 26 USCA § 6654
Current through P.L. 118-233. Some statute sections may be more current, see credits for details.

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