

**MARIN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (MCERA)  
POLICY REGARDING IMPLEMENTATION OF CALIFORNIA FELONY  
FORFEITURE LAWS**

**Adopted: June 14, 2017**

**Reviewed: June 10, 2020**

**Reviewed: May 3, 2023**

**I. BACKGROUND AND PURPOSE**

Felony forfeiture laws applicable to public retirement benefits in California originally applied only to *elected public officers* who took public office, or were reelected to public office, on or after January 1, 2006. (Gov. Code §7522.70, formerly Gov. Code §1243.)

The Public Employees' Pension Reform Act of 2013 ("PEPRA") added two broader felony forfeiture statutes applicable to *all public employees* as of January 1, 2013, and further provided that the pre-existing more narrow felony forfeiture statute would not apply in any instance in which the newly-enacted forfeiture statutes applied.

(Collectively, such newly-enacted statutes are referred to hereinafter as the "Felony Forfeiture Statutes.") One of the Felony Forfeiture Statutes applies to public employees who were first employed, appointed, or elected *before* January 1, 2013. (Gov. Code §7522.72). The other applies to those who were first employed, appointed, or elected *on or after* January 1, 2013. (Gov. Code §7522.74).

Both Felony Forfeiture Statutes enacted by PEPRA provide that public retirement benefits may be forfeited, as described below, if a public employee is convicted by a state or federal trial court of any felony when the felony conviction is:

for conduct arising out of or in the performance of [the public employee's] official duties, in pursuit of the office or appointment [of the public employee], or in connection with obtaining salary, disability retirement, service retirement, or other benefits.

(Gov. Code §§ 7522.72, subdiv. (b)(1) & 7522.74, subdiv. (b)(1).) Further, the statutes provide as follows regarding felonies involving a child:

if a public employee who has contact with children as part of his or her official duties is convicted of a felony that was committed within the scope of his or her official duties against or involving a child who he or she has contact with as part of his or her official duties.

(Gov. Code §§ 7522.72, subdiv. (b)(2) & 7522.74, subdiv. (b)(2).) When the felony is for the conduct described in either of these two provisions, then the forfeiture permitted by the statute is as to "rights and benefits earned or accrued from the earliest date of the commission of [the] felony to the forfeiture date." (Gov. Code §§ 7522.72, subdiv. (c)(1))

& 7522.74, subdiv. (c)(1).) Both statutes require the public employer who “employs or employed a public employee [convicted of a felony] and that public employee” to notify MCERA “of the public employee’s conviction within 90 days of the conviction.” (Gov. Code §§ 7522.72, subdiv. (f) & 7522.74, subdiv. (f).)

## **II. POLICY**

Upon receipt of notification from any source of a felony conviction of an MCERA member, the Retirement Administrator will investigate and analyze the matter, in consultation with MCERA’s counsel, and determine whether the conviction implicates one or more of the Felony Forfeiture Statutes and/or other applicable law.

If the Retirement Administrator determines that one of the Felony Forfeiture Statutes is implicated by the member’s conviction of a felony, then MCERA will promptly provide written notification to the member (i) regarding the Felony Forfeiture Statute that applies to his or her MCERA benefit(s); (ii) with documentary support for the conclusion that such Felony Forfeiture Statute applies, if available; (iii) showing how the forfeiture is calculated; and (iv) stating that the member has the right to challenge the determination, in which case the matter will be decided by the MCERA Board of Retirement (“Board”).

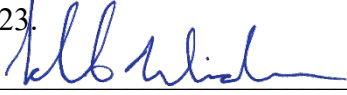
If the member challenges MCERA’s determination regarding applicability of a Felony Forfeiture Statute, the matter will be scheduled for determination by the Board at a regularly scheduled public meeting. At such meeting, MCERA will present its conclusions and Board members will be provided an opportunity to ask questions. The member and his or her counsel, if represented, will also be provided an opportunity to present to the Board and to provide any information or records pertinent to the issues. Public comment will be taken. The Board will then deliberate and determine whether it has sufficient information to take action on the matter. If so, it will decide the matter by majority vote. If not, it may refer the matter for an administrative hearing as provided in its *Procedures for Hearings on Matters Other than Disability Retirement*. In the event of significant exposure to litigation and proper notice in accordance with the Ralph M. Brown Act, the Board may deliberate on the matter in closed session.

## **III. POLICY REVIEW**

The Retirement Board will review this Policy at least every three years to assure its efficacy and relevance. The Board may amend this Policy from time to time by majority vote.

**IV. RETIREMENT ADMINISTRATOR'S CERTIFICATE**

I, Jeff Wickman, the duly appointed Retirement Administrator of the Marin County Employees' Retirement Association, hereby certify that this policy was reviewed on May 3, 2023.



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Retirement Administrator