



## Select Committee on Pension Policy

### Pension Garnishment

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### Governor Asked SCPP To Recommend Whether Pensions Should Be Garnishable For Additional Reasons

- In other words, pensions can only be garnished under certain circumstances
  - Should the list of circumstances be expanded?
- Initial SCPP briefing in May
- Executive Committee scheduled today's work session



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## Preview: Pension Policy Meets Judicial Policy

- Recent court case and legislation focus on timing of garnishment
- Governor's question focuses on underlying policy
- Changes to underlying policy would involve complex questions of judicial policy



## Today's Presentation

- Background
  - Garnishment generally
  - Garnishing pensions
  - Recent court case and legislation
  - Governor's letter
- Analysis
  - Pension policy
  - Judicial policy
  - Administrative and drafting aspects
- Next Steps
- No committee action required today



## Caveat

- Staff not experts in judicial policy
- Worked with AGO to confirm understanding of applicable laws
- Identified as many judicial policy issues and questions as we could
  - More highlighted in issue paper, but still not exhaustive list

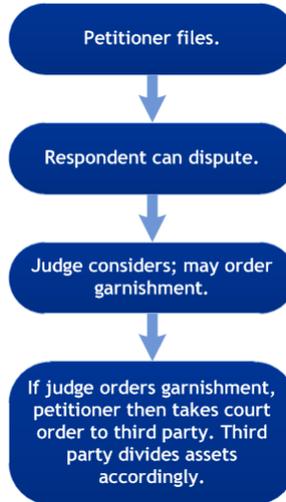


## Garnishment Generally

- Process of enforcing and collecting a debt via a third party
- For example, if a parent owes child support, that parent's wages might be garnished to enforce payment



## Process For General Garnishment



## Garnishment Is Capped

- Writ (court order) of garnishment will state how the assets are divided, up to a maximum cap
  - Caps vary based on type of judgment
  - Some types of property are exempt
- Caps and exemptions ensure the person retains at least some minimum amount



## Pensions Are Largely Exempt From Garnishment

- State statute
  - State has interest in protecting retirement income for all citizens
- Federal
  - Exclusive Benefit Rule (EBR) in Internal Revenue Code requires that pensions be for the exclusive benefit of members and beneficiaries
- Exemption is not absolute



## Statute Allows Pension Garnishment In Limited Circumstances

- Three general exceptions
  - Divorce
  - Child support
  - Federal court order
- One limited exception
  - Criminal restitution
- Pension garnishment is capped based on type of exception:
  - Generally capped at 50 percent for child support, and 75 percent for divorce
  - Can be up to 100 percent for enforcement of federal orders

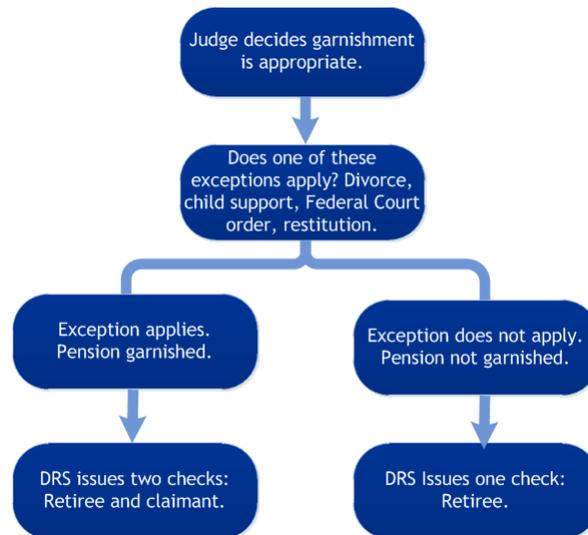


### Limited Exception For Criminal Restitution

- Statute allows garnishment following conviction for crime that results in injury
  - Includes most injuries, including serious bodily injury
- Not available in civil cases
- Only includes easily ascertainable damages
  - E.g. medical bills, or lost wages
  - Does not include pain and suffering



### Process For Garnishing Pensions



## Preview: Three Big Pieces

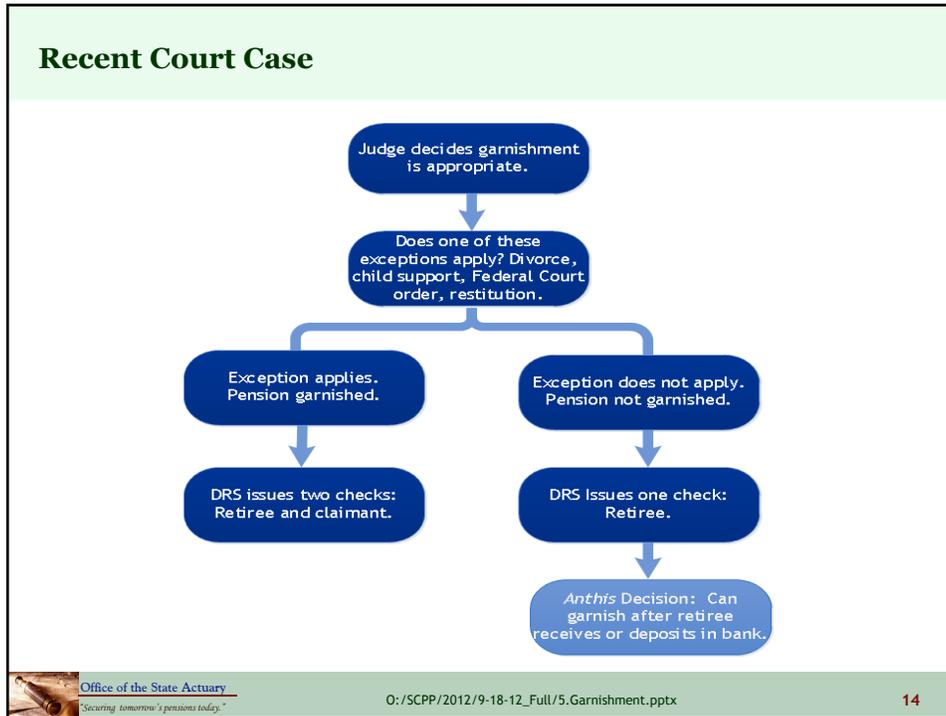
- Court case, legislation, and Governor's question address different aspects of the issue
  - Clear overlap
  - Subtle differences
- Recent court case and legislation are about the timing of garnishment
  - I.e., can pension assets be garnished after retiree receives them?
- Governor's question focuses on underlying policy
  - I.e., under what circumstances should pensions be garnishable?



## Recent Court Case

- *Anthis v. Copland*, 270 P.3d 574 (2012)
  - Wrongful death claim against LEOFF retiree
  - Victim's spouse awarded damages
  - Defendant's only asset was his pension
  - Victim's spouse sought to garnish pension
- In brief, State Supreme Court held that pension assets can be garnished once the funds have been paid to the retiree.
- Decision was technical
  - Court also stated that the Legislature could change this by adding language to statutes.
- Court has denied motion to review





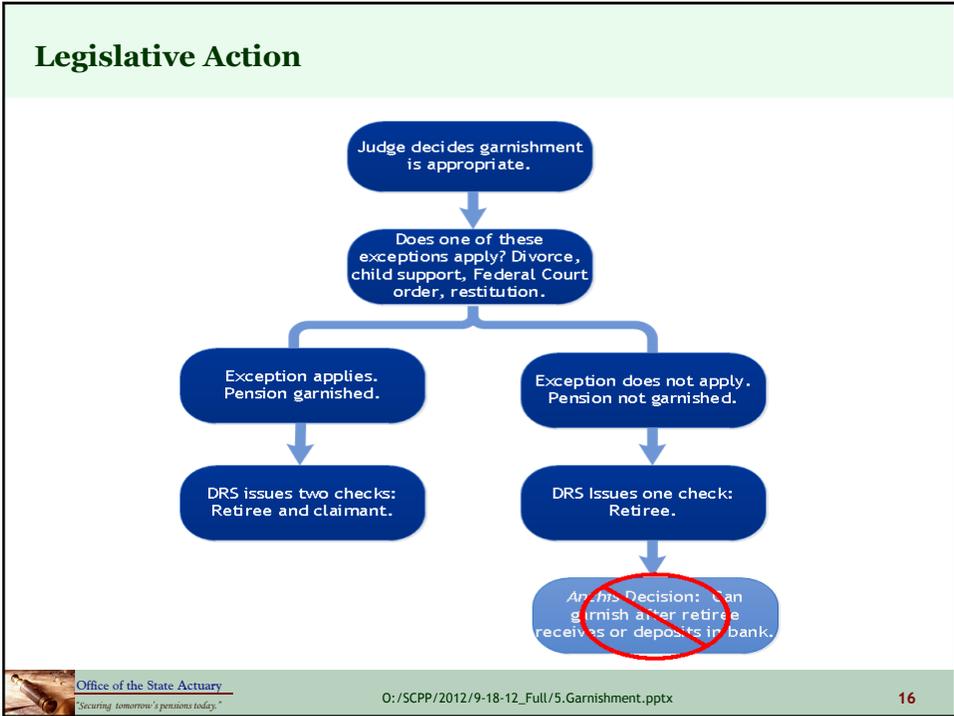
### Legislature Modifies Garnishment Statutes

- HB 1552 contained several modifications to garnishment statutes
  - For example, using new forms, and changing attorney fees
- Bill amended to add new provision
  - Pensions are exempt from garnishment, even when in possession of the retiree, or deposited in a bank account
  - Current exceptions for child support, etc., are unchanged
- Bill passed, and was signed into law

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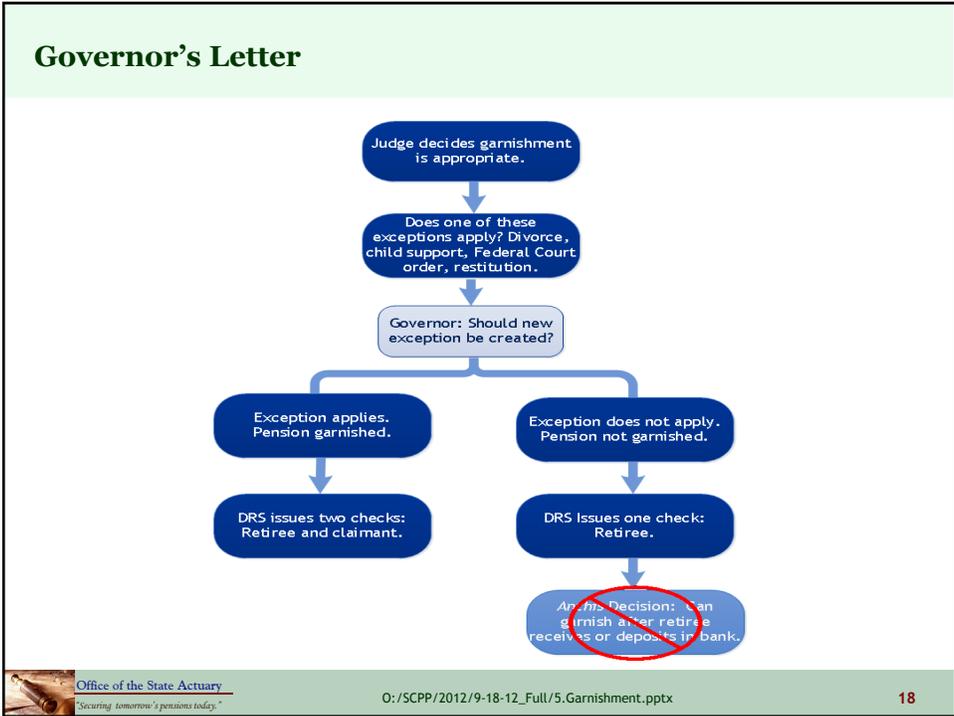


### Governor Asked SCPP To Study Pension Garnishment

1. Should there be an additional exception to the general rule exempting pensions from garnishment?
  - In addition to divorce, child support, federal order, or limited restitution
  - For example, where the retiree caused serious bodily injury or death
2. If so, what should the cap be?



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- ### Preview Of Analysis: Issue Crosses Into Pension Policy And Judicial Policy
- Central issue: Balancing public interests
  - Pension aspects
    - Impact on pension liabilities
    - Contractual rights
    - Federal law
    - Other states
  - Judicial aspects
    - Sample questions
    - Non-pension statutes
  - Administrative aspects
    - Impacts to DRS
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## Central Issue: How Should Public Interests Be Balanced?

- Many competing interests:
  - Protecting retirement income for citizens
  - Ensuring that separated spouses support each other financially
  - Ensuring parents provide financial support for their children
  - Complying with federal law
  - Requiring convicted criminals to compensate their victims.



## Creating A New Exception Would Not Impact Pension Liabilities

- If the SCPP recommends (and Legislature enacts) a new exception, the total pension liabilities will not change
- Plan pays the same amount no matter how the monthly check is divided



## Contractual Rights

- RCW explicitly provides limited circumstances where pensions can be garnished
- Policymakers may want to consider whether retirees or current plan participants have a contractual right to those limits
- Policymakers may wish to consult the Attorney General's Office for advice before pursuing a particular option



## Federal Law

- Federal tax law analysis provided by Ice Miller, LLP
  - "Ground rules" for creating a new exception
- To be consistent with prior IRS rulings, a new garnishment provision that is not related to enforcing federal law may need to be voluntary
  - I.e. debt may be mandatory, but garnishment of pension would be optional for retiree
- If not voluntary, it may raise issues under the exclusive benefit rule
- Does not necessarily mean new mandatory garnishments are prohibited
  - Would be outside prior rulings
- May want additional analysis before pursuing a particular option



## Other States

- All Washington peer states allow pension garnishment for ex-spouse and child support
- At least six allow garnishment for unpaid taxes
- Two (Colorado and Ohio) allow for restitution in limited criminal cases
- Staff largely relied on plan handbooks
  - Handbooks may not anticipate the precise question



## Issue Crosses Into Judiciary Policy

- If new exception(s) created
  - Practical application involves complex questions of judicial policy
  - Involves many non-pension statutes
- May wish to coordinate efforts with experts in judicial policy



## Sample Judicial Policy Questions

- What types of judgments are included?
- What types of injuries should count?
- Who should qualify?
- Should it be retroactive?
- More discussion and sample questions in issue paper.



## Issue Involves Many Non-pension Statutes

- Five more-or-less self-contained RCW chapters for garnishment and similar mechanisms
- More than one explicitly includes pensions
- Other statutes also overlap to some degree
- More details in issue paper



## DRS Emphasized Need For Bright Line Rule

- Retain current delineation between judicial role and plan administrator role
  - Judge decides
  - DRS follows court order, and is not in position of deciding if/when garnishment is appropriate



## Summary

- Governor asked:
  - Should there be an additional exception to the general rule exempting pensions from garnishment?
    - For example, where the retiree caused serious bodily injury or death
    - If so, what should the cap be?
- Current exceptions include divorce, child support, federal order, or limited restitution
- New garnishment exception may need to be voluntary to be consistent with prior IRS rulings
- Issue overlaps with judicial policy
  - May want to coordinate with judicial policy experts
- If changes are made, DRS wishes to retain a bright-line rule



## Possible Next Steps

- Nothing more at this time
- Executive Committee may direct staff to:
  - Prepare letter to the Governor recommending no changes be made
  - Coordinate with Judiciary Committees
  - Prepare policy options for next meeting

