



September 26, 2018

## Out of Jurisdiction Duty

### COMPREHENSIVE REPORT

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### ISSUE STATEMENT

Members who are injured while responding to an emergency out of their jurisdiction are not entitled to LEOFF 2 duty disability or duty death benefits.

### OVERVIEW

This report will discuss the issues that have arisen from public safety officers responding to the domestic terrorist attacks in Las Vegas, provide information on what LEOFF Plan 2 benefits are currently available to members who are injured or killed while responding to incidents out of jurisdiction, and review how federal benefits apply. This report will also identify several questions that policymakers may want to consider.

### BACKGROUND AND POLICY ISSUES

An off-duty member who becomes disabled or is killed while responding to a mass casualty incident has the same level of benefits as a member who becomes disabled or is killed from any other type of non-duty occurrence.

There has been a recent push across the west coast (in response to last year's Las Vegas terrorist attack) to ensure first responders receive duty related benefits when responding to an incident no matter where it takes place.

A number of California law enforcement officers were shot and injured while providing lifesaving care at the Las Vegas terrorist attack, but when they went to file workers compensation claims, they were denied. Had those off-duty officers been shot and injured while responding to a mass-killing in California, they likely would have received benefits without dispute. But because they were injured in Nevada, their life-saving efforts cost them.

Legislation has been introduced in California to address this issue. See Appendix A.

A law enforcement officer from Tacoma, Aaron McNeely, was vacationing in Las Vegas the night of the terrorist attack. McNeely heard muffled booms in the distance and his wife noticed a lot of sirens. McNeely told his wife to stay in their room while he took off running. McNeely ended up treating at least 10 of the more than 850 people wounded in the shooting near the Mandalay Bay Resort, in which 58 people died. For his actions, McNeely was awarded the Medal of Valor, the Tacoma Police Department's highest award, on July 2, 2018. Had McNeely been injured or killed for his brave acts, he and his family would have had no benefits to fall back on.

### **Current LEOFF Benefits**

Current statute limits duty disability retirement and duty related death benefits to members who become injured while “on the clock” with their employer.

Any member who becomes disabled during their off time is limited to a non-duty disability benefit. The calculation for a non-duty disability benefit is as follows:

- $2\% \times \text{FAS} \times \text{service credit years}$

The monthly benefit is actuarially reduced to reflect the difference between the members’ age at the time of their disability retirement, and age 53. Suffering a disability at a younger age will lead to a larger reduction.

The survivors of any member who is killed during their off time are limited to either a withdrawal of member contributions (less than 10 years of service) or a non-duty death benefit. The calculation for a non-duty death benefit is actuarially reduced in the same manner as a non-duty disability benefit.

### **Federal Benefits - Public Safety Officers Benefits Program**

Opponents of granting more benefits to these members argue that the coverage for these types of events should be done at the federal level. The most common federal benefit for public safety officers who are killed or become catastrophically disabled is the Public Safety Officers Benefits (PSOB) Program.

The PSOB provides a \$343,589 lump sum death and total-disability benefits for eligible public safety officers. The PSOB definition of eligibility states that a public safety officer's death or total and permanent disability must result from injuries sustained in the line of duty. "Line of

duty" means any action that the public safety officer is authorized or obligated to perform by law, rule, regulation or condition of employment or service.

If law enforcement, fire suppression, rescue or ambulance service is not a person's primary function, then, to be covered by the Act, that person must be engaged in his or her authorized law enforcement, fire suppression, rescue or ambulance duties when the fatal or disabling injury is sustained.

Therefore, the federal PSOB benefits do not apply to out of jurisdiction deaths or disabilities.

### **What Level of Benefits is Appropriate?**

The primary policy question is whether the Board wants to expand disability coverage for these types of events. The current benefit for these members' only provides the normal retirement formula, actuarially reduced by the difference between the members' age and age 53.

- Should the level of benefits rise to the level of a line of duty disability/death providing full earned benefits?
- If a member becomes catastrophically disabled, should the level of benefits rise to the catastrophic duty disability benefit, where a member would receive 70% of their FAS as well as medical premium reimbursements?
- If a member dies while performing this type of service, should his survivor be entitled to the lump sum payment of 150% of their contributions plus interest or a monthly benefit?
- If a member dies while performing this type of service, should his survivor be entitled to the lump sum line of duty death benefit<sup>1</sup>?
- If a member dies while performing this type of service, should the level of benefits include medical premium reimbursements provided to survivor of a member killed in the course of employment?

### **Policy Issues**

This issue of compensation is certain to remain in the forefront as communities across the country face a threat from mass-casualty events, including terrorist attacks and wildfires. These events continue to show the necessity for our society to protect our public safety officers, irrespective of the areas they are from and where they perform their service on behalf of all Americans.

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<sup>1</sup> \$251,353 as of 7/1/18

In a series of enactments signed by Presidents Bush and Obama, beginning with the "Law Enforcement Officers' Safety Act" and culminating with provisions from the "National Defense Authorization Act," federal law has encouraged public safety officers to be available when duty calls, and to that end allows them to carry their service weapons across state lines, regardless of the laws of any particular state. Therefore, the members injured on October 1, 2017, in Las Vegas, Nevada, were properly and lawfully armed, and expected to perform the duties of a peace officer if conditions warranted.

With more of these tragic events occurring, off duty officers who are injured or killed protecting our society will have no benefit protection for their families. This causes all public safety officers to have to weigh their willingness to step into dangerous areas to offer their help, with the reality that if they were to be injured or killed their families would be left with nothing.

### **Policy Options**

1. Offer off duty members, who are injured or killed while responding to a public emergency, the same death and disability benefits as afforded to on duty members.
2. Offer off duty members, who are injured or killed while responding to a public emergency, a lower level of benefits than granted to those injured or killed while on duty.
3. Maintain current policy.

## **SUPPORTING INFORMATION**

### **Appendix A: California Assembly Bill 1749**

## APPENDIX A: CALIFORNIA ASSEMBLY BILL 1749

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law provides that whenever any peace officer, as defined, is injured, dies, or is disabled from performing his duties as a peace officer by reason of engaging in the apprehension or attempted apprehension of law violators or suspected law violators, or protection or preservation of life or property, or the preservation of the peace anywhere in this state, including the local jurisdiction in which he is employed, but is not at the time acting under the immediate direction of his employer, he or his dependents, as the case may be, shall be accorded by his employer all of the same benefits, including the benefits of this division, which he or they would have received had that peace officer been acting under the immediate direction of his employer. Existing law provides that any injury, disability, or death incurred under the circumstances described in this section shall be deemed to have arisen out of and been sustained in the course of employment for purposes of workers' compensation and all other benefits.

This bill would provide that whenever any peace officer is injured, dies, or is disabled from performing his duties as a peace officer by reason of engaging in the apprehension or attempted apprehension of law violators or suspected law violators within or out of the state, or protection or preservation of life or property within or out of the state, or the preservation of the peace anywhere in this state, but is not at the time acting under the immediate direction of his employer, he or his dependents shall be accorded by his employer all of the same benefits the peace officer or his dependents would have received had that peace officer been acting under the immediate direction of his employer. The bill would provide that this provision is declaratory of existing law.

The people of the State of California do enact as follows:

SECTION 1. Section 3600.2 of the Labor Code is amended to read:

3600.2. (a) Whenever any peace officer, as defined in Section 50920 of the Government Code, is injured, dies, or is disabled from performing his duties as a peace officer by reason of engaging in the apprehension or attempted apprehension of law violators or suspected law violators within or out of the state, or protection or preservation of life or property within or out of the state, or the preservation of the peace anywhere in this state, including the local jurisdiction in which he is employed, but is not at the time acting under the immediate direction of his employer, he or his dependents, as the case may be, shall be accorded by his employer all

of the same benefits, including the benefits of this division, which he or they would have received had that peace officer been acting under the immediate direction of his employer. Any injury, disability, or death incurred under the circumstances described in this section shall be deemed to have arisen out of and been sustained in the course of employment for purposes of workers' compensation and all other benefits.

(b) Nothing in this section shall be deemed to:

(1) Require the extension of any benefits to a peace officer who at the time of his injury, death, or disability is acting for compensation from one other than the city, county, city and county, judicial district, or town of his primary employment.

(2) Require the extension of any benefits to a peace officer employed by a city, county, city and county, judicial district, or town which by charter, ordinance, or departmental regulation, whether now in force or hereafter enacted or promulgated, expressly prohibits the activity giving rise to the injury, disability, or death.

(3) Enlarge or extend the authority of any peace officer to make an arrest; provided, however, that illegality of the arrest shall not affect the extension of benefits by reason of this act if the peace officer reasonably believed that the arrest was not illegal.

SEC. 2.

The amendments to Section 3600.2 of the Labor Code made by this act do not constitute a change in, but are declaratory of, existing law.



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# Issue

- **Members who are injured while responding to an emergency out of their jurisdiction are not entitled to LEOFF 2 duty disability or duty death benefits**



# Overview

- This report will discuss the issues that have arisen from public safety officers responding to the domestic terrorist attacks in Las Vegas, provide information on what LEOFF Plan 2 benefits are currently available to members who are injured or killed while responding to incidents out of jurisdiction, and review how federal benefits apply. This report will also identify several questions that policymakers may want to consider

# Background

- An off-duty member disabled or killed responding to a mass casualty incident out of jurisdiction only has same benefits as a member disabled from any other type of non-duty injury
- Recent push across the west coast (in response to the Las Vegas terrorist attack) to ensure that officers and other first responders can get benefits no matter where an incident takes place

# Background

- California law enforcement officers shot and injured while providing lifesaving care at the Las Vegas terrorist attack
  - Issues with approval of Workers' Compensation Claim
- Had those off-duty officers been shot and injured while responding to a mass-killing in California, they likely would be taken care of without dispute

# Current LEOFF Benefits

- Limits duty disability and duty death benefits to members who become injured while “on the clock” with their employer
- Any member who becomes disabled in their off time is limited to a non-duty disability benefit
  - $2\% \times \text{FAS} \times \text{service credit years}$  (Actuarially Reduced)
  - Suffering a disability at a younger age will lead to a larger reduction
  - <10 YOS– withdrawal of members contributions plus interest

# Federal Benefits - PSOB

- Opponents argue that coverage should be done at the federal level
- Public Safety Officers Benefits Program (PSOB) provides benefits for public safety officers killed or disabled in line of duty
- Public safety officer's death or total and permanent disability must result from injuries sustained in the “line of duty”
- \$343,589 lump sum payment for line of duty death and total-disability
- PSOB benefits do not apply to out of jurisdiction (off-duty) situations

# Benefit Considerations

- Does the Board want to expand duty disability coverage for out of jurisdiction events?
- Should benefits rise line of duty disability & death providing full earned benefits?
- If catastrophically disabled, should benefits rise to the catastrophic duty disability benefit?
- If a member dies while performing this type of service, should his survivor be entitled to full survivor benefits?

# Policy Issues

- This issue of compensation is certain to remain in the forefront as communities across the country face a threat from mass-casualty events, including terrorist attacks and wildfires
- Series of enactments signed by Presidents Bush and Obama encouraged public safety officers to be available when duty calls, and allows them to carry their service weapons across state lines:
  - “Law Enforcement Officers' Safety Act”
  - "National Defense Authorization Act“

# Policy Issues

- With more of these tragic events occurring, off duty officers who are injured or killed protecting our society will have no benefit protection for their families
- This causes all public safety officers to have to weigh their willingness to step into dangerous areas to offer their help, with the reality that if they were to be injured or killed their families would be left with nothing



# Policy Options

1. Offer off duty members, who are injured or killed while responding to a public emergency, the same death and disability benefits as afforded to on duty members
2. Offer off duty members, who are injured or killed while responding to a public emergency, a lower level of benefits than granted to those injured or killed while on duty
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# Questions?

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