

**REPORT TO THE STATE OF WYOMING
REGARDING
ANALYSIS AND RECOMMENDATIONS FOR
PUBLIC SAFETY PENSION CRITERIA**

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SECTION I: Background and Theoretical Foundation of Public Safety Plans

It is common for public employers to maintain separate retirement programs, or at least have separate benefits and formulas within their general retirement program, for public safety employees. Part of the reason for this is historical—police and firefighters were among the first public sector employees to have pension plans. Another factor involved is the ability of public safety groups to successfully lobby for enhanced benefits. Related to both of these factors is the special nature of public safety jobs. Their jobs involve higher degrees of risk for physical harm or death and generally require higher levels of physical ability than average workers. Accordingly, in order to attract and retain qualified individuals, it is important that they be provided with benefits that will protect them and their families adequately in light of the risks they take for the public's safety and well-being. A final factor related to attracting and retaining public sector employees, particularly public safety employees, is that, historically, wages in the public sector were not as generous as private sector wages and this disparity was somewhat mitigated by providing attractive retirement benefits.

In general, public safety employees' retirement programs include earlier retirement provisions, and enhanced disability and death benefits. The earlier retirement provisions are designed to enable public safety employees to retire at earlier ages in recognition of the fact that they may not be able to work as long as other employees because of the physical demands and risks of their jobs. Earlier retirement ages are also in the best interests of the public because they help ensure that public safety employees have the physical abilities to perform their jobs. The enhanced disability benefits, which in many cases are higher if the cause of disability is work-related, are designed to protect public safety employees who have a significantly greater risk of becoming disabled as a result of the nature of their jobs. The enhanced death benefits are designed to protect public employees' dependents by replacing the income lost by such employees who have a higher risk of early death due to the nature of their jobs.

The 2001 book "*Pensions in the Public Sector*," (Olivia S. Mitchell and Edwin C. Husted, eds) summarized the differences between public plans for public safety employees versus public plans for general employees as follows:

Common Features of Public Plans for Public Safety Employees

- Unreduced retirement benefits are provided at age 50 or 55 with 20 years of service and at any age with 25 years of service.
- Plans that require 20 years of service tend to base benefits on a flat percent of final average pay (e.g., 50%).
- Final average pay is generally a three-year average.
- Plans that vest after five or ten years tend to use either a single-rate or step-rate multipliers for each year of service.
- Benefit multipliers are generally 2.26 percent for groups covered by Social Security and 2.3 percent for groups not covered by Social Security.

Common Features of Public Plans for General Employees

- *Unreduced* retirement benefits are provided only at age 55 with 25 – 30 years of service.
- *Reduced* early retirement benefits are provided at 50 or 55 with 10 - 20 years of service.
- Single-rate benefit formulas are generally used.
- Final average pay is generally based on the highest three or five years of service.
- Benefit multipliers are generally 1.72 percent for groups covered by Social Security and 2.24 percent for groups not covered by Social Security.

Historically, the first groups to be covered by public safety plans were police and firefighters. Initially, these were simple, straightforward, and easily identifiable groups. However, as governments have grown and the number and types of jobs have increased, it became less clear which of the new jobs carry the same types of risks and warrant the enhanced benefits available to the police and firefighter categories.

In recent years, there appears to have been an increase in the types of groups to which public safety plans are extended. This has been due in part to lobbying by various groups that perceive their members to have jobs that are dangerous, risky, stressful, etc. Today, many state public safety plans cover a broader range of job titles, including such groups as corrections officers, probation officers, parole officers, child protective services workers, animal control workers, park rangers, port authority and airport police groups, fish and game wardens, conservation workers, etc.

SECTION II: **Analysis of Wyoming's Current Public Safety Retirement Provisions and Comparison to Standard Public Safety Programs**

Wyoming's Law Enforcement System allows members to receive unreduced retirement benefits at age 60 with 4 years of service or at any age with 20 years of service. Members with fewer than 20 years of service may retire as early as age 50 with reduced benefits. Unreduced benefits are calculated at 2.5% for every year of service multiplied by the member's "highest-five" average pay. Early retirement benefits that commence prior to age 60 are reduced by 5% for every year under age 60.

Wyoming's Law Enforcement System compares favorably to those of other public sector pension plans for public safety employees. It has a higher normal retirement age (60) than is frequently found in other public sector plans but this is balanced by a lower service requirement (4 years at age 60). Few other public sector plans allow members to receive an unreduced retirement benefit after 20 years of service with no minimum age requirement. The 2.5% multiplier for every year of service compares favorably with the multiplier found in most public safety plans. Although a high-three average pay is most common for public safety plans, high-five average pay is also used frequently.

With regard to death and disability benefits, little consistency is found from one public safety plan to the next and establishing a "norm" is far more difficult in light of such variance. A comparison of Wyoming's Law Enforcement System's death and disability benefits to those of other regional plans is reflected on the attached chart entitled "Comparison Of Public Safety Plan Provisions In Wyoming Region."

SECTION III: Analysis of Wyoming's Current Definition of Law Enforcement Officer

Wyoming's Law Enforcement System defines law enforcement officers as: county sheriffs, deputy county sheriffs, municipal police officers, jailers, University of Wyoming campus police officers, correctional officers, cattle brand investigators, probation and parole officers employed by the DOC, law enforcement academy instructors, detention officers, and dispatchers for a law enforcement agency.

All of the groups identified under current law fit under the concept of a public safety employee in that they serve a role in keeping the general public out of harm's way. However, the scope of a public safety employee's duties generally extends beyond the function of serving the public good—that is, typically, a public safety employee is exposed to a greater potential for physical harm or even death than most positions. Furthermore, a public safety employee's job is usually more physically taxing than other jobs and therefore necessitates superior physical fitness.

It is in recognition of the fact that public safety employees are exposed to greater risks of physical harm and death, and that the physical demands of their jobs may prevent them from working later into life, that enhanced benefits are offered to these employees. While it is apparent that many of the jobs covered by the Wyoming Law Enforcement system involve risks, it is not clear that all of the positions fulfill a public safety officer's role in the broadest sense of the job requirements and thus warrant enhanced retirement benefits.

SECTION IV: Comparison of Wyoming's Definition of Law Enforcement Workers to Those in Contiguous States' Plans

Wyoming's definition of a law enforcement member for purposes of its Law Enforcement System is broad but typical of other states in the region. For this study, the Wyoming region includes: Colorado, Idaho, Montana, Nebraska, South Dakota and Utah. Attached is a chart entitled "Comparison Of Public Safety Plan Provisions In Wyoming Region" which summarizes the public safety plan provisions of the states in the region.

Conventional definitions of law enforcement officers generally include municipal police officers, county sheriffs, deputy sheriffs, city police chiefs and highway patrol officers. Like Wyoming, South Dakota and Utah have a broader definition of law enforcement officers that includes, but is not limited to, campus security officers, park/forest rangers, penitentiary correctional staff, and parole officers. In Utah, to determine that a position should be covered under the public safety system, the Peace Officer Standards and Training Council (POST) must determine that the position requires the employee to: (1) place his/her life or personal safety at risk and (2) complete POST training.

Idaho includes employees of the Fish and Game Department but makes clear that the position must involve *active* law enforcement services for which current POST certification is required. Positions whose principal full-time duties are not within the scope of active law enforcement, even if current POST certification is required, are not eligible for police officer member status. The criteria to determine if a group of employees should be covered under the enhanced law enforcement plan are strictly dependent on the probability that employees will experience diminished physical ability to perform their jobs at advanced ages. There has not been a change in the definition of covered employees in recent years in Idaho but the trend leans toward limiting groups entitled to enhanced law enforcement benefits.

Montana is unique among states in the region in that it has a stratified system that breaks public safety employees into four categories: Highway Patrol Officers, Sheriffs, Municipal Police Officers, and Game Wardens and Peace Officers. The Highway Patrol Officers' System covers all members of the Montana Highway Patrol, including supervisory personnel. The Municipal Police Officers' System includes police officers employed by first- and second-class cities. The Sheriffs' System includes sheriffs and DOJ investigators and, effective in 2005, county detention officers. (The addition of county detention officers roughly doubled the size of the Sheriffs' System, which was by far the most dramatic change to the covered employee definition of any of the systems.) The Game Wardens' and Peace Officers' System covers the broadest group of employees. It includes game wardens, motor carrier officers, campus security officers, wardens, deputy wardens, corrections officers, drill instructors, probation and parole officers, stock inspectors, and motor vehicle inspectors.

Colorado and Nebraska have relatively narrow plans compared to surrounding states. The Fire and Police Pension Association of Colorado is comprised of all full-time officers of participating police departments. The Nebraska State Patrol Retirement System limits membership to sworn officers of the Nebraska State Patrol.

Given the current landscape of public safety plans, Wyoming's definition of a public safety member is relatively consistent with contiguous states. Groups in Wyoming asking for inclusion such as state park rangers and DOC personnel are covered in some other public safety plans. Groups like animal control, county and district prosecutors and public defenders are not found in other public safety plans in the region.

SECTION V: Objective Process For Analyzing Nature of the Duties, Responsibilities, Physical Conditioning Appropriate Certification and Other Pertinent Requirements To Determine Whether a Group Should be Included in the Law Enforcement Program

In general, there are two basic methods used to identify what employees will be covered by an enhanced public safety retirement program. One method is to have specific job titles approved in the statutes. The other method is to develop criteria that can be applied consistently to each group petitioning or being considered for inclusion in the program.

The listing of specific job titles is currently the most prevalent approach. It is used by all of the public safety systems in Wyoming's region as well as a number of other states we surveyed. Some states include a large number of named jobs. For example, Texas lists 33 job titles. New Jersey has a list of over 250 specific job titles. This method apparently works well for many states. However, we have anecdotal evidence that some public employers are considering other approaches in light of the number of groups that continue to petition for the more generous benefits provided by public safety plans.

The second method, which is the application of stated criteria to various jobs being considered for inclusion, has been proposed or is used in some states and for some federal purposes.

The two most basic criteria reflect the dangerous/hazardous nature of the jobs to be done and the necessity for certain physical and/or technical capacity. Other factors include the authority and ability to enforce various types of laws.

To illustrate, following is a description of some of the criteria that have been proposed or adopted in other states or for certain federal purposes:

Comprehensive Set of Criteria Proposed in California in 1967:

- (1) Employees must be actively and principally engaged in protecting the public from physical harm and danger, including continuous responsibility for safeguarding public and private property.
- (2) The job requirements place a high priority and demand top physical fitness and agility.
- (3) The safety of the general public would be continuously and substantially jeopardized if retirement was not permitted or perhaps required at earlier ages than other public plan employees.
- (4) Entry level positions require high physical standards and early recruitment ages to insure physically superior employees and sufficient service to provide reasonable retirement benefits at earlier retirement ages.
- (5) There is a history of disability and death for the job groups that is significantly in excess of that experience by other job groups. The employees in the group are required to actively and continuously protect people from physical harm and their employment requires that they maintain the physical characteristics necessary to ensure an adequate level of public protection.

This comprehensive set of criteria places special emphasis on the hazardous nature of the job and the continuing necessity to maintain the physical stamina and technical training to carry out the responsibilities of the job. Such a set of criteria would not seem to include jobs that involve contact with potentially dangerous individuals but do involve the active enforcement of laws or involve a high probability of actual physical danger, such as parole agents, public defenders, some correctional facility officers, etc.

Two-Pronged Criteria Proposed in California in the 1970s

- (1) ***Public Protection.*** The normal scope of duties includes substantial responsibility for protecting people from physical violence or danger and safeguarding public and private property. The employees must serve in positions that regularly require response to emergency situations that involve threats to human life. At any time, employees may be required to place themselves in extremely hazardous situations in order to assure the protection of the public.
- (2) ***Physical Capacity.*** The conditions of employment require the employee to maintain the physical capacity necessary to provide a level of service to the public such that the safety of the public would be jeopardized if retirement were not permitted at ages earlier than non-public safety groups.

Two-Part Criteria Based on Hazardous Duty and POST Certification Used in Arizona

The Arizona Public Safety Personnel Retirement System requires that employees be regularly assigned to hazardous duty and be a "certified peace officer." Peace officers are certified by the Arizona Peace Officer Standards and Training Board. The criteria involve the following types of requirements:

- (1) U.S. citizenship
- (2) Minimum age
- (3) High school diploma or equivalent
- (4) Background check
- (5) Medical exam
- (6) No felony record
- (7) Honorable discharge from military service
- (8) Never denied certification as a peace officer
- (9) No significant history of sale or use of illegal drugs
- (10) No pattern of prescription drug abuse
- (11) Polygraph test
- (12) No traffic violations in last 3 years
- (13) Read and agree to abide by ethics standards
- (14) Required training commensurate with type/level of certification
- (15) Firearms training and continued qualification
- (16) Continuing education

These criteria appear to focus more on the necessity for exposure to hazardous duty and the requirements to be able and willing to carry out the functions of a job involved in enforcing the law.

Simplified Law Enforcement Definitions

A number of public safety systems use fairly simple definitions that require an employee to be licensed as a peace officer, have full power to arrest, be assigned to a police or sheriff's office (or some other law enforcement agency) and have a job with primary responsibility for the enforcement of the general criminal laws of the state, including traffic, highway and penal laws

Federal Based Definition

The Law Enforcement Officers Safety Act (P.L. 108-277) defines a qualified law enforcement officer as an "employee of a governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest and is authorized by the agency to carry a firearm."

This definition could fail to cover certain specialized law enforcement groups such as those employed by colleges or universities, railroads, airports, etc. Accordingly, this definition could be modified to include individuals who are certified or commissioned as safety officers under the laws of a state who has similar authorities and responsibilities.

This definition focuses on the law enforcement responsibilities of an employee and not on the dangerous or hazardous nature of the job.

Recommendations

To ensure that the philosophical goals of an enhanced public safety retirement plan are met, we recommend that a criteria-based method be adopted. We believe that the 1967 proposal developed in California in 1967 is a good starting point in that it stresses the hazardous nature of the jobs and the physical demands of the jobs that may preclude employees covered by a public safety retirement plan from working to advanced ages.

These are the most important and logical reasons for establishing an enhanced pension program for public safety employees. To ensure that covered employees continue to satisfy the criteria, the criteria should be strengthened by the addition of certification requirements, both with respect to basic public safety job skills and physical training and standards.

Following are our criteria recommendations:

- (1) Covered employees must be actively and principally engaged in protecting the public from physical harm and danger, including continuous responsibility for safeguarding public and private property. Initially, the ability to perform the job must be evidenced by the employee being certified by completing job-related academic and skills training. Re-certification at periodic intervals should be required.
- (2) The requirements of covered employees' jobs must place a high priority on physical fitness and agility. Initially, covered employees must be required to satisfy physical tests appropriate to their specific positions. As above, re-certification at periodic intervals should be required.
- (3) The safety of the general public would be continuously and substantially jeopardized if covered employees were not permitted to retire or perhaps required to retire at earlier ages than other public plan employees.
- (4) Entry level positions for covered employees require high physical standards and early recruitment ages to ensure physically superior employees and sufficient service to provide reasonable retirement benefits at earlier retirement ages.
- (5) There is a history of disability and death for covered employees' job groups that is significantly in excess of that experience by other job groups. Covered employees are required to actively and continuously protect people from physical harm and their employment requires that they maintain the physical characteristics necessary to ensure an adequate level of public protection.

W.S. 7-2-101 defines, among other things, what positions qualify as a "peace officer" under Wyoming law. The definition covers a variety of law enforcement jobs. Some, but not all of the positions, would meet the criteria specified above. Title 9: Chapter 1, Article 7 of the Wyoming Statutes outlines the duties, authorities and responsibilities of the Peace Officers Standards and Training Commission. The POST requirements for peace officers should be the primary method of satisfying the certification requirements of criteria (1) and (2) above.

Thus, the determination of what positions should be covered by the Wyoming Law Enforcement Plan would involve the analysis of whether the position constituted a peace officer under the Wyoming statutes, whether the individual satisfied the POST requirements and finally whether the nature of the actual job performed satisfies all of the above-described criteria.

If the recommended criteria are adopted and some of the existing job classifications that have been allowed to enter the Law Enforcement System do not qualify under the new rules, our recommendation is that the employees in such job classifications be grandfathered under the existing Law Enforcement System.