

## ***A MESSAGE FROM THE PRESIDENT, JANUARY 2018***

### **A Missed Opportunity to Close the Justice System's Revolving Door**

Whittier Police Officer Keith Boyer was killed in the line of duty on February 20th by a convicted felon who had cycled through the criminal justice system multiple times and was currently on probation. Less than a month later, Assembly Member Ian Calderon held a press conference near the Whittier City Hall Police Memorial to announce the introduction of AB 1408, intended to help prevent similar tragedies with commonsense reforms that would repair some of the damage done by realignment. Despite the bill's unanimous passage in the Legislature and widespread support from law enforcement and victims' organizations, Governor Jerry Brown vetoed it on October 15th, to the great dismay of law enforcement.

After serving a prison term for robbery and another for grand theft (committed while on parole), the suspect charged in Officer Boyer's murder had been jailed and released repeatedly for probation violations. Each time the known gang member violated the terms of his release, the Los Angeles County Probation Department imposed "flash incarceration" — brief jail stays of up to 10 days apiece, a system created when AB 109 shifted parole responsibility for many felonies to county probation departments in 2011. Under the prior system, he could have spent a year in prison for just one of his four probation violations. Instead, the short stints in jail, the last of which he completed only a week before Boyer was slain, were the equivalent of a slap on the wrist.

Working closely with the law enforcement community, Assembly Member Calderon (D-Whittier) introduced AB 1408 to address some of the shortcomings of AB 109. The bill would have required counties to revoke probation for offenders after their third violation. It also required Board of Parole hearings to consider an inmate's whole criminal history, not just their most recent offense, when determining whether to release them from prison. Further, it required the state Department of Corrections and Rehabilitation to provide local probation departments with copies of an inmate's record of supervision during any prior period of parole, to ensure full and accurate knowledge of their past criminal activity. The goal of these measures was to close some of the loopholes that allow repeat offenders to deliberately abuse the system and continue endangering public safety. AB 1408 would have increased the information and tools available to law enforcement agencies as they attempt to navigate the new criminal justice landscape created by the state's attempts to reduce prison overcrowding.

Despite a uniformly positive response to the bill from lawmakers on both sides of the aisle, Governor Brown refused to sign it. His short veto statement failed to address any of the AB 1408's merits beyond calling it "a sincere attempt to respond to a truly terrible crime." He simply claimed that its "three strikes and you're out approach ... would undermine the sound discretion of local probation authorities."

The move comes as the negative consequences of California's criminal justice reform measures continue to mount. Early releases under AB 109 realignment, reduced penalties under Prop 47 and drastically shortened sentences under Prop 57 have all contributed to rising crime rates that threaten the safety of both law enforcement officers and the public they serve. Adding insult to

injury, a few days before Brown rejected AB 1408, he signed SB 620, which strips mandatory sentencing enhancements for criminals convicted of committing a felony with a gun. Even as lawmakers move to introduce new gun control measures in response to the Las Vegas mass shooting, adding to California's already strict restrictions, the state has passed a law that reduces penalties for those who use guns in a crime — adding one more way for offenders to end up back on the street sooner.

AB 1408 was a reasonable, practical approach to preventing future tragedies like the one that took Officer Keith Boyer's life while he was protecting his community. The governor's refusal to pass this bipartisan bill represents yet another get-out-of-jail-free card for criminals. At least 13,500 prisoners were released and nearly 200,000 felony convictions retroactively erased by Prop 47 in 2016 alone. AB 1408 would have reduced the damage to public safety by improving the monitoring of these felons in our midst, helping law enforcement and corrections authorities to identify the most dangerous, unreformed career criminals and keep them off our streets. Crime and recidivism will continue to grow unless our lawmakers listen to law enforcement and take decisive action to address the problems they have created with these misguided reform measures.

## Quick Refresher on MOU

Some of you have reached out asking about specific dates when some of the economic items of the current MOU take effect. Below I have listed the remaining dates. The ones that took effect in 2017 I did not list, such as the 5% salary in July 2017 and the insurance addition (county contribution). However, any of you who need that information let me know and I will get you those dates and corresponding dollar amounts or percentages.

July 2, 2018 5% pay increase for all members

July 1, 2019 5% pay increase for all members

\*\*Incentives tied to salary (POST, PTO, Shift Differential) also increase due to these raises

January 1, 2018

- An increase of up to \$10 per pay period for employee coverage
  - Goes from \$278 per pay period to \$288 per pay period
- An increase of up to \$30 per pay period for dependent coverage
  - Goes from \$90 per pay period to up to \$120 per pay period for a total of \$408 per pay period for those employees with dependent coverage

January 1, 2019

- An increase of up to \$10 per pay period for employee coverage
  - Goes from \$288 per pay period to \$298 per pay period
- An increase of up to \$30 per pay period for dependent coverage

- Goes from \$120 per pay period to up to \$150 per pay period for a total of \$448 per pay period for those employees with dependent coverage
  
- January 1, 2018:
  - Increases to \$700 annually for all personnel who are required to maintain a Class A/Class B Uniform
  - All other personnel (except Dispatchers) would get \$250 annually
- January 1, 2019:
  - Increases to \$1000 annually for all personnel who are required to maintain a Class A/Class B Uniform
  - All other personnel (except Dispatchers) would get \$350 annually
- Upon formal approval of contract :
  - 1% increase to 5% for all personnel subject to graveyard
  - July 2, 2018: 1% increase to 6% for all personnel subject to graveyard
  - July 1, 2019: 2% increase to 8% for all personnel subject to graveyard

## Impact of Decision in **ACDSA** on PEPRA Constitutionality

This Monday, January 8, 2018, the California First District Court of Appeal issued an important decision in *Alameda County Deputy Sheriffs' Association v. Alameda County Employees' Retirement Association ("ACDSA")*. The decision is largely a win for the public employees and a reaffirmation of most of the key principles of the vested rights doctrine that protects public employee pension benefits from modification.

This is the same appellate court - albeit a different three justice panel - that issued the 2016 decisions in *Marin Association of Public Employees v. MCERA* and *CAL FIRE Local 2881 v. CalPERS*. Both of these decisions tried to reinterpret decades of California Pension Law and threatened to open the door to a new round of pension attacks. As prior blasts have informed you, we were successful in persuading the Supreme Court to grant review of both the *Marin* and *CAL FIRE* cases. The decision in *ACDSA* helps restore some balance, and along with a 2015 decision in *Protect Our Benefits v. City & County of San Francisco*, it reiterates, this time in spite of the rulings in *Marin* and *CAL FIRE*, the key principles underpinning the protection of your pension.

Here are the key takeaways from the *ACDSA* decision:

- When premiums are lawfully included in pension calculations, current employees acquire a vested constitutional right to pension benefits based on those pay items. After PEPRA some county retirement boards no longer treated some premiums as pensionable. *ACDSA* says that was unlawful and it rejects *Marin*, which reached the opposite conclusion.
- *ACDSA* criticized the *Marin* court's reliance on generalized claims of a "pension crisis" as the justification for impairing pension rights. *ACDSA* emphasized - consistent with prior cases - that in order to justify impairing a benefit, the employer must make a compelling case against the particular benefit and not, as *Marin* did, against pension systems as a whole. Speculation about a pension crisis will not cut it.
- Whereas *Marin* held that employees are only entitled to a "reasonable" pension, *ACDSA* held that *Marin* got it wrong. The correct test is whether the impairment of the promised benefit is "reasonable." *ACDSA* held that PEPRA failed to justify why it was targeting particular benefits of current employees. The court's analysis must focus on the real impact to employees of the disadvantages caused by the enactment - mere speculation is insufficient.

*ACDSA* proffers a far more well-reasoned decision than in *Marin* or *CAL FIRE*. Ultimately, however, the California Supreme Court will resolve these opposing views of the First District Court of Appeal.

We will continue to monitor and give updates on any of the pension reform cases that are either in the Court of Appeals or waiting on review within the California Supreme Court.

Take care and take care of one another.

-Eric