§ 63-e. Retirement for disability incurred in performance of duty; Westchester county district attorney investigators. a. The county of Westchester may elect to make the benefits provided in this section available to criminal investigators, senior criminal investigators, deputy chief criminal investigators, and chief criminal investigators who are in the employ of the Westchester county district attorney.

b. A member shall be entitled to retirement for disability incurred in the performance of duty if, at the time application therefor is filed, he or she is:

1. Physically or mentally incapacitated for performance of duty as the natural and proximate result of a disability not caused by his or her own willful negligence sustained in such service and while actually a member of the retirement system, and

2. Actually in service upon which his or her membership is based. However, in a case where a member is discontinued from service, either voluntarily or involuntarily, subsequent to sustaining a disability in such service, application may be made not later than two years after the member is discontinued from service; and provided that the member meets the requirements of subdivision a of this section and this subdivision.

c. Application for retirement for disability incurred in performance of duty may be made by:

1. Such member, or

2. The head of the department in which such member is employed.

d. After the filing of such an application, such member shall be given one or more medical examinations. If the comptroller determines that the member is physically or mentally incapacitated for the performance of duty pursuant to subdivision b of this section and ought to be retired, he or she shall be so retired. Such retirement shall be effective as of a date approved by the comptroller.

e. 1. No such application shall be approved, however, unless the member or some other person on his or her behalf shall have filed written notice in the office of the comptroller within ninety days after the occurrence which is the basis for the disability incurred in the performance of duty, setting forth:

(a) The time, date, and place of such occurrence, and

(b) The particulars thereof, and

(c) The nature and extent of the member's injuries, and

(d) The alleged disability.

2. The notice herein required need not be given:

(a) If notice of such occurrence shall be filed in accordance with the provisions of the workers' compensation law of any state within which the county of Westchester shall have its employees located or performing functions and duties within the normal scope of their employment, or

(b) If the application for retirement for disability incurred in the performance of duty is filed within one year after the date of the occurrence which forms the basis for the application, or

(c) If a failure to file notice has been excused for good cause shown, as provided by rules and regulations promulgated by the comptroller.

3. Notwithstanding any other provision of law to the contrary, the provisions of this subdivision shall apply to all occurrences before or after the effective date of this section.

f. The retirement allowance payable upon retirement for disability incurred in the performance of duty shall consist of a pension of one-half of his or her final average salary plus an annuity which shall be the actuarial equivalent of the member's accumulated contributions, if any.

g. If the member, at the time of the filing of an application under the provisions of subdivision c of this section, is eligible for a service retirement benefit, then and in that event, he or she may simultaneously file an application for service retirement; provided that the member indicates on the application for service retirement that such application is filed without prejudice to the application for the

retirement for disability incurred in performance of duty.

h. Any benefit provided pursuant to this section shall not be considered as an accidental disability benefit within the meaning of section sixty-three, sixty-four, five hundred seven-f, five hundred seven-g, six hundred seven-e, or six hundred seven-f of this chapter. Any benefit payable pursuant to the workers' compensation law to a member receiving a disability allowance pursuant to this section shall be in addition to such retirement for disability incurred in performance of duty allowance.

i. A final determination of the comptroller that the member is not entitled to retirement benefits pursuant to this section shall not in any respect be, or constitute, a determination with regard to benefits payable pursuant to section two hundred seven-c of the general municipal law.

j. Nothing in this section shall be deemed to preclude the simultaneous filing of an application for benefits pursuant to any other section of law nor the consideration of such application by the retirement system, including an accidental disability benefit pursuant to section sixty-three of this article.