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Representing America's Finest

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PSOB Issues Final Regulations Regarding 9/11-Related Cases

The Public Safety Officers' Benefits (PSOB) Program issued final regulations, twenty-one months after the proposed regulations were issued, regarding how the Program will handle 9/11-related cases as well as making some programmatic improvements and changes. NAPO joined other stakeholders in a meeting with PSOB leadership on June 1, to go over the changes made by the regulations.

9/11-Related Claims

The rule states that the PSOB Program will work collaboratively with the World Trade Center Health Program (WTCHP) and the Victims Compensation Fund (VCF), enacted by the James Zadroga 9/11 Health and Compensation Act of 2010, to determine PSOB 9/11 exposure claims based on the WTCHP medical certifications and VCF determinations. By relying on the determinations of the WTCHP and the VCF, the PSOB Office will be able to process a significant number of 9/11-related death and disability claims.

Further, for those 9/11-related claims that do not have a WTCHP or VCF certification, the PSOB Program is adopting the methodology established by the WTCHP and the VCF to determine claims, including recognizing the List of WTC-related health conditions.

It also addresses the need for PSOB – under law – to offset the death or disability benefit by the amount awarded to the family by the VCF. In our comments on the proposed regulations back in September 2016, we called on PSOB to have the offset based on the VCF actual net payment (the amount awarded after all deductions are taken) rather than the total amount the officer is eligible to receive. NAPO was glad to see the final regulations follow our recommendation, ensuring officers and families get the greatest benefit available to them. There are cases where a claimant has a VCF award calculation of \$1.5 million that is then reduced to \$200,000 due to offsets. This calculation of the offset by PSOB would make them eligible for the remainder of the PSOB award (an additional \$150,000) in addition to the \$200,000 VCF benefit.

The final rule also establishes additional guidelines for “time for filing” a claim for 9/11-related cases. In addition to the current time for filing, it adds the latest of: (1) two years after (a) a diagnosis of a WTC-related health condition or (b) the condition is certified as a WTC-related health condition; or June 14, 2020 (two years after the enactment of these regulations). This allows those whose loved ones died or were catastrophically injured by a 9/11-related health condition years after September 11, 2001 the ability to file for PSOB claims. It also allows those who did not file claims for whatever reason within three years of the officer's death from a 9/11-related health condition or within 1 year of a disability determination to submit claims until June 14, 2020. This is a major victory for our members and the 9/11 first responder community.

Finally, regarding 9/11-related claims, the final regulations add a provision that 9/11 responders who previously had their claims denied based on the PSOB Program not recognizing their condition as a line-of-duty injury can ask to have their case reconsidered. This is unprecedented and shows that the PSOB Program is serious in its efforts to ensure every public safety officer who dies or is injured due to their 9/11-related health condition gets the benefits they and their families deserve.

PSOB Program Changes & Improvements

The final rules also made some improvements and changes to the PSOB Program, most significant of which are:

- Adds travel to and from work authorized or required by the public safety agency to the definition of “authorized commuting”;
- Adds a new definition for “candidate-officer” and “candidate-officer training” to cover official police and fire academy candidates under PSOB;
- Changes the definition of “line of duty injury” to include retaliation for the status of being a public safety officer whether on or off-duty;
- Adds a “supporting evidence collection period”, which allows individuals to file a notice of intent to file a claim and gives them year to collect all the necessary supporting evidence before the claim must be filed; and
- Changes the definition of “child of a public safety officer”, pursuant to the Dale Long Public Safety Officers’ Benefits Improvements Act of 2012, to allow only those children conceived or alive at the time of catastrophic injury or death to be considered a child of a public safety officer for purposes of PSOB benefits.

This last change to the definition of a “child of public safety officer” may have significant impact on the families of public safety officers who die or become disabled due to a 9/11-related health condition. Many of those officers who responded to the September 11th terrorist attacks continued to live their lives before becoming seriously ill, with some having children. Unfortunately, any child conceived or born after September 11, 2001 will not be covered by PSOB even if their parent receives a death or disability benefit. This is a tragic oversight by Congress in passing the Dale Long Act and NAPO will work to rectify it and ensure all children of PSOB-eligible public safety officers are covered under the program.

While there is still need to improve the PSOB Program – from taking care of all children of public safety officers to the stringent thresholds to qualify for disability – NAPO is mainly pleased with the changes made by the final rule, particularly the additions regarding 9/11-related claims. The final rule builds on the improvements we won last year with the passage of the PSOB Improvement Act and it gives us a clear path to how we can continue make the program better. We will work with the PSOB stakeholder community to ensure officers and families get the benefits they deserve.

The final rule goes into effect June 14. If you have any questions about the final rule and the changes it made to the program, please contact Andy Edmiston at aedmiston@napo.org.

NAPO Opposes New Prison Reform Legislation

NAPO has come out in opposition to H.R. 5682, the Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person (FIRST STEP) Act. This prison reform legislation was introduced on May 7 and moved quickly through the House, passing by an overwhelming vote on May 22 without slowing down to get the input of the law enforcement community or to consider our serious concerns with the legislation. As it is currently written, every single major national law enforcement organization has come out against it.

The FIRST STEP Act tries to do too much at once, and consequently, would negatively impact public safety. States and localities would become the dumping ground for federal criminals due to the retroactive increases in good time credits and program participation credits. Further, the bill does not contain the safeguards, support and resources to states and localities that would be necessary for communities to handle the influx of parolees. As we have seen in California, while the state prison reforms have led to lower state prison populations and some savings for the state, it has resulted in increased stresses on local and county budgets and resources as those prisoners who were once wards of the state fill county jails and flood community services.

Major cities across the country are facing an increase in violent crime for the first time in years. According to the FBI's latest Uniform Crime Report, *Crime in the United States, 2016*, the number of violent crimes, including murder, aggravated assaults and rapes, increased for the second straight year. Now is not the time to implement reckless reforms to our nation's correctional system. Such significant changes should first be thoroughly studied and must include the input of the federal, state and local public safety community, which plays an integral role in the system.

NAPO and others in the law enforcement community urged the House to strongly consider our concerns with the FIRST STEP Act to no avail and now we are working with the Senate to ensure our voices are heard and this bill will thoughtfully be considered before being pushed forward. We met with Senator John Cornyn (R-TX)'s staff – as the Senator is the sponsor of the Senate version – to discuss our concerns and the staff promised to work with us faithfully to address any major concerns but stated that they are committed to passing the FIRST STEP Act.

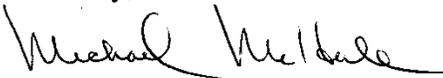
We will keep our members updated on the status of the FIRST STEP Act. If you have any questions about the bill, please contact Andy Edmiston at aedmiston@napo.org.

Please Help Sponsor an Event at the NAPO Convention

NAPO's 40th Annual Convention in San Diego, California is quickly approaching. We are busy planning what is sure to be a fantastic convention. We would like to ask that member organizations please consider contributing \$500 - \$1000 towards the cost of the convention. Signs will be displayed at the events to recognize our generous sponsors. It would be incredibly helpful to NAPO if all of us pitch in as we are able. If your organization would like to help sponsor an event, please return the [attached form](#) and payment to NAPO by **June 29, 2018**.

Thank you in advance for helping to make NAPO's 40th Annual Convention a success!

Sincerely,



Michael McHale, President



Bill Johnson, Executive Director

House Trying to Force Senate to Eat Changes to ECPA

While NAPO does not object to the requirement for law enforcement to obtain a warrant for the contents of stored communications, H.R. 387, the Email Privacy Act, would do much more than that. NAPO believes that several provisions of the bill would place an undue burden on law enforcement's ability to gather evidence that can help solve crimes. Furthermore, the bill does not address the real and growing challenges faced by investigators and prosecutors in obtaining electronic evidence when they attain the required legal process.

The House passed H.R. 387 by voice vote in February 2017 and the bill has gone nowhere in the Senate where several Republican Senators on the Senate Judiciary Committee hold the same concerns about the bill as the law enforcement community.

The bill in its current form would create significantly more protection for stored emails than the protection afforded to the contents of someone's house. There are two issues of particular concern. The first is the unprecedented requirement for law enforcement to serve a warrant for electronic evidence directly on a customer or subscriber who is under investigation - and even describe details of the investigation - creating significant risk of evidence destruction, flight, and threats to the safety of investigating officers. The second issue is that the bill does not contain sufficient exceptions to the warrant requirement for urgent situations like an imminent threat of physical harm, likely destruction of evidence, consent by a victim or a witness, or public safety emergencies that are not necessarily part of a criminal investigation (missing child, missing elderly adult).

H.R. 387 is not just a "warrant for content" bill. It goes far beyond that in ways that would make it harder for law enforcement to investigate crimes. NAPO is working with the Senate Judiciary Committee staff to ensure that the Committee narrows the scope of the bill and finds a balance between protecting electronic privacy with the needs of law enforcement. Committee Chairman Charles Grassley (R-IA) and his staff share our concerns with H.R. 397 and are working closely with us on compromise legislation. We have had several meetings over the past month to hammer out the final language.

We are facing a time crunch and an uphill battle as the House is determined to get the Email Privacy Act passed in any way possible. The House voted to include it as an amendment to its version of the National Defense Authorization Act (NDAA) for Fiscal 2019, which passed overwhelmingly on May 24. The Senate is looking to debate and vote on its version of the NDAA this week (which does not include the Email Privacy Act) and the House and Senate will have to go to conference to negotiate the difference between the two bills. House Appropriators also included the Email Privacy Act in the Fiscal 2019 Financial Services Appropriations Act. We must fight to ensure that the Email Privacy Act language does not get included in the final version of either the NDAA or the Financial Services Appropriations Act.

NAPO is grateful to the support of Chairman Grassley and his staff and we are working to thwart the House's efforts to ensure our compromise bill gets a fair chance in the Senate.

NAPO on the Hill: Public Pension Meetings

The budget compromise that passed Congress in February included language establishing a Joint Select Committee on the Solvency of Multiemployer Pensions Plans that has the goal of submitting legislation to Congress by the end of November that would solve the pension crisis facing several multiemployer pension plans.

As the Joint Select Committee on the Solvency of Multiemployer Pensions Plans focuses on the solvency issues facing multiemployer pension plans, there has recently been some conflation between these plans and state and local government retirement systems by some Joint Committee members and staff, which needs to be corrected. NAPO's biggest concern is that the Public Employee Pension Transparency Act (PEPTA) could make its way into the final recommendations even though the issues faced by multiemployer plans are not being experienced by public pension plans.

NAPO and members of the Public Pension Network (PPN) – a group of public pension practitioners and retirement systems, public sector labor organizations, and state and local government representatives in which NAPO has long participated – have a strong opposition to the public pension requirements contained in PEPTA as they do not protect benefits, save costs or improve retirement system funding. We believe they are unfunded mandates and an inappropriate federal intrusion into areas that are the fiscal responsibility of sovereign States and

local governments, and are conflicting, administratively burdensome and costly. Further, PEPTA threatens to eliminate the tax-exempt bonding authority of state and local governments.

Federal interference in state and local public pensions not only violates the principles of federalism, but represents a fundamental lack of understanding regarding state and local government operations and financing, including governmental accounting rules and strict legal constraints already in place that require open financial reporting and processes. It also ignores the fact that every state and countless localities have recently made modifications to pension financing, benefits structures, or both.

NAPO joined other members of the PPN in meetings with members of the Joint Select Committee to ensure that public pension provisions continue to be excluded from the Committee's scope, any hearings held, or legislation it produces. The PPN is working its way through meetings with Senators Orrin Hatch (R-UT), Sherrod Brown, Mike Crapo (R-ID), Lamar Alexander (R-TN), Joe Manchin (D-WV), Rob Portman (R-OH), Heidi Heitkamp (D-NC) and Tina Smith (D-MN), and Representatives Richard E. Neal (D-MA), Bobby Scott (D-VA), Virginia Foxx (R-NC), Vern Buchanan (R-FL), Phil Roe (R-TN), David Schweikert (R-AZ), Donald Norcross (D-NJ) and Debbie Dingell (D-MI).

On the Democratic side, there is no confusion that public pensions are not part of the scope of the Committee and we have received assurances that the Senators and Representatives will fight any effort to make them part of the discussion. We have had some mixed reactions on the Republican side, with at least one bringing up what to do about public pensions during a Committee meeting. NAPO will continue to meet with members of the Committee and monitor the work of the Joint Select Committee to make certain that public pension plans are not on the table.

Please monitor NAPO's website, www.napo.org, and Facebook page: National Association of Police Organizations, and follow us on Twitter at NAPOpolice for breaking news and updates.