

**Statement of Senator Patrick Leahy  
Debate on the Conference Report  
To Accompany the National Defense Authorization Act for Fiscal Year 2013  
Senate Floor  
December 21, 2012**

On November 28, 2012, the Senate overwhelmingly passed my legislation, the Dale Long Public Safety Officers Benefits Improvement Act of 2012 as an amendment to the bill the Senate will likely pass today, the National Defense Authorization Act for Fiscal Year 2013.

At that time, by a margin of 85 to 11, the Senate sent a strong message of support to the men and women across America who serve their fellow citizens as public safety officers. The Senate made clear that this important policy, in place since 1976, is worthy of our continued attention and our efforts to make it better for those it is intended to benefit. I thank the 85 Senators who voted in favor of my amendment on November 28, and for standing with first responders across the United States.

As the Senate gives its consideration to final approval of the National Defense Authorization Act, I want to take a few moments to discuss what my amendment contains, and the intent behind the various provisions within it. Before I do, however, in light of the terrible tragedy in Newtown, Connecticut that occurred on December 14, let me take a moment to recognize the first responders of Newtown and all who answered the call on that terrible day. In the midst of such incredible sadness, let us recognize the men and women who answered that call, who put the well-being of schoolchildren, teachers, and staff ahead of their own safety and entered that school to face the unknown and do whatever they could to help. And let us recognize those who stood bravely to render medical aid and give comfort to others amidst unspeakable violence and sorrow.

In recent days, a quote by the late children's educator and minister Fred Rogers has been shared widely among Americans searching for some light within the darkness of what occurred in Newtown. In the quotation, he recalls how in the face of something frightening, his mother used to tell him, "Look for the helpers. You will always find people who are helping". He said then that he was comforted "by realizing that there are still so many helpers—so many caring people in the world." His words exemplify our nation's first responders. I know that this tragedy affects them just as deeply as it affects all of us and in some ways that are difficult for us to fully understand. But the dedication and bravery of these men and women is something that I want to acknowledge and commend. It is their determination and the actions of first responders across the country every day that serve as the foundation and inspiration for the Federal policy we strengthen for them today.

The centerpiece of my amendment to the National Defense Authorization Act is a measure to fill a gap in the Public Safety Officers Benefits (PSOB) law, which was exposed following the tragic death of a decorated emergency medical technician who served the community of Bennington, Vermont. Dale Long was killed in the line of duty in a traffic accident while responding to an emergency call. When his surviving family members looked in to filing a claim with the PSOB

office at the Justice Department, they learned that a technicality made it impossible for the PSOB office to review Dale Long's claim.

Under the PSOB law, in order for an emergency medical technician serving the public to be covered, he or she must be part of a public agency, as defined in the law. In Vermont, and elsewhere in the United States, particularly in rural areas, there are ambulance companies that do not have a formalized relationship with a state or municipal government, and therefore are not considered a public agency under the law. This technicality meant that Dale Long, and others like him across the country who serve their communities as part of a private, non-profit rescue company, subject to the same risks and stresses, did not have the security of coverage under the PSOB program. Dale Long's tragedy exposed this gap, and I introduced legislation to fix it.

Mr. Long worked for the Bennington Rescue Squad, a private, non-profit entity serving Bennington, Vermont. The Bennington Rescue Squad has been serving the people of Bennington, Vermont since 1963, and provides paramedic 911 services to that community. It is an integral part of the public safety infrastructure of Bennington, Vermont. Similarly situated men and women who serve others as a part of private, non-profit rescue squads should be placed in the same position that all other EMTs, firefighters, and police officers are relative to the PSOB program. Today, after nearly three years of work in Congress, and through the tireless advocacy of so many in the public safety community like the American Ambulance Association, the Fraternal Order of Police, the International Association of Firefighters, and many others, I expect that this measure will be enacted. This is their law.

The other provisions in this legislation were developed around the provision I drafted to support Dale Long's survivors and all who may find themselves in similar circumstances. In cooperation with House Judiciary Chairman Lamar Smith, I assembled a host of other measures to make the PSOB program more equitable, and more efficient for the families of our fallen first responders and those first responders who have been permanently disabled in the line of duty.

Before describing those measures, and the intent behind them, it is important to consider the overarching intent behind the original enactment of the PSOB law. In 1976, Congress enacted the Public Safety Officers Benefits Act in order to accomplish several policy goals. First, Congress sought to provide uniformity to a disparate system for first responder benefits across the country and to ensure that irrespective of the benefits provided in a state, all first responders, regardless of where they lived, would benefit from meaningful assistance. In doing so, Congress also intended to ensure that the Federal PSOB benefit was to be provided *in addition* to any other death or disability benefits that may be provided by a state. This policy was affirmed by the Supreme Court in the 1986 case of *Rose v. Arkansas State Police*. There, in affirming Congress' intent to protect the Federal benefit from reduction by the provision of a state benefit, the Court identified that Congress wished to address the inadequacy of death benefits paid to first responders in some states.

At the time of the original law's enactment, Congress also believed and intended that a uniform Federal benefit, irrespective of and immune from reduction by any state benefit, would encourage recruitment and retention of qualified public safety officers. The United States Court of Federal Claims, in upholding the award of a PSOB benefit that had been wrongly denied,

wrote in *Demutiis v. United States*: “Recognizing the extraordinary risks incurred by officers in serving the public, Congress provided for these death benefits not only as a matter of equity, but also to promote the recruitment and retention of safety officers as part of the national fight against crime.” This incentive, central to congressional policy, is only meaningful and effective when the process for providing these benefits is efficient and free from unnecessary delay or dispute.

Congress sought with the law to recognize the very real risks that public safety officers face on a daily basis—whether fighting a fire, apprehending a criminal, or providing lifesaving medical assistance during an emergency situation.

The House Judiciary Committee, in its report at the time of PSOB’s original enactment, noted that there was a moral component to this program as well. Then, the House Judiciary Committee characterized the original Act as Congress’ “recognition of society’s moral obligation to compensate the families of those individuals who daily risk their lives to preserve peace and to protect our lives and property.” I agreed then, and I believe now as strongly as ever that supporting our first responders is the right thing to do.

The passage of this amendment to the National Defense Authorization Act for Fiscal Year 2013, will add efficiencies to claims processing and expand benefits available under the program, and will further and reaffirm Congress’ original intent.

This legislation, which the House of Representatives has approved, and which the Senate now considers, makes several important changes to the broader PSOB law, including the Hometown Heroes law, which I was proud to author in 2003. I will take a moment now to discuss those provisions.

The Hometown Heroes law makes first responders who have died as the result of a heart attack or stroke in the line of duty, or within a discrete time period following the period while the first responder was on duty, eligible for a death or disability benefit under the PSOB law. The amendment we consider strengthens this law. It does so by adding to the list of qualifying health incidents “vascular rupture,” thus broadening coverage under the Hometown Heroes law. Under current law, in order to be eligible for a benefit, an officer must have suffered a heart attack or stroke. There are, unfortunately, cases on hold within the PSOB office that are not being processed due to the presence of a vascular rupture, which is nevertheless a health event consistent with the type of stressful activity associated with the work that first responders do every day.

The Hometown Heroes statute recognizes those situations where an officer engages in “nonroutine, stressful or strenuous physical” activity. This definition and its implementing regulations have been the source of concern for many in the first responder community. “Nonroutine, stressful or strenuous” activity is defined in the law to exclude “actions of a clerical, administrative, or nonmanual nature.” Thus the law contains a very limited universe of activities that are expressly excluded from the Hometown Heroes definition or what type of activity is covered. As author of the Hometown Heroes law, it was my intent to make sure that those first responders, who suffer a catastrophic health event while on duty or shortly following a

period of duty, were covered. No one should doubt the stresses encountered every day by our first responders. If we know one thing about the work that our first responders do, it is that it is unpredictable and is very difficult to characterize as routine. Congress intended that the language delineating the type of activity that would give rise to Hometown Heroes claim be construed broadly and the addition of “vascular rupture” to the list of qualifying health events underscores that intent.

In 2007, the Senate Judiciary Committee held a hearing to examine the Department of Justice’s implementation of the Hometown Heroes law. This hearing followed many calls from the first responder community to provide oversight on its implementation. I believe this hearing helped to move the needed regulations along, and served to remind relevant officials that this undertaking and policy was important to the legislative branch. It served to reaffirm that at bottom Congress was seeking with this law to benefit first responders and that ambiguities should be resolved in favor of the claimant consistent with the overarching congressional policy.

Congress did not intend for lawyers at the Department of Justice to argue with claimants over the meaning of “nonroutine, stressful or strenuous physical” activity. Anyone who has served as a public safety officer knows that there is nothing “routine” about the work. From responding to an emergency scene to render assistance, performing a traffic stop that can go very wrong in an instant, maintaining custody of inmates, or engaging in a training or fitness exercise, “nonroutine, stressful or strenuous physical” activities are expressed clearly in the statute, and Congress understood, and intended, that the vast majority of line-of-duty work in which first responders engage is “nonroutine, stressful or strenuous physical” activity. As the statute makes abundantly clear, with its limited exceptions, activities that would be considered routine, and not stressful or strenuous physical activity, consist generally of clerical or administrative activities. Indeed, given the Hometown Heroes statutory presumption, which directs PSOB fact finders to presume that a heart attack, stroke, or vascular rupture is an injury sustained in the line of duty for purposes of a PSOB benefit, Congress made the judgment and intends for such claims to be weighted heavily in favor of providing the benefit.

Under the law, the presumption in favor of the benefit may only be overcome when PSOB fact finders are presented with evidence that factors other than duty-related activities led to a stroke, heart attack, or vascular rupture. The legislation we consider today refines the existing statutory standard to emphasize that the “mere presence” of cardiovascular risk factors in a fallen first responder is not enough to overcome this presumption. That is, simply because a public safety officer who suffers a heart attack, stroke, or vascular rupture may have had present risk factors or other indicators of the presence of cardiovascular disease, that is not enough to overcome the strong presumption in favor of eligibility. Nothing in this legislation or the refinement to the Hometown Heroes law should be construed as a departure from this presumption. Indeed, the intent of this provision is to clarify that the burden to overcome the presumption is a heavy one. As Congress recognized in 2003 with the enactment of the Hometown Heroes law and its statutory presumption, serving as a first responder presents physical and psychological challenges unlike any other occupation in civil society.

In order to expedite claims processing for first responders and to reduce administrative costs within the PSOB office, the legislation we consider contains a measure to include a “medical or

claims examiner” within the definition of hearing examiner. If enacted, this measure, one resource for the fact finder, is to be used carefully and limited to those instances where the fact finder determines that a “medical [or claims] examiner” within a medical specialty or subspecialty may provide in-person examinations or record reviews to gain greater insight regarding a claim. In turn, that examiner will submit a report to the fact finder for consideration. Nothing in this measure, or the House Report’s analysis of the companion bill H.R.4018, should be construed to remove the discretion of the fact finder. The fact finder must weigh the totality of the evidence, including reports of independent treating physicians whose experience and expertise regarding an officer’s medical history and current condition are invaluable for a greater understanding of the case.

The legislation further amends the PSOB statute to clarify and restate existing practice and procedure that PSOB payments shall be made “only upon determination by the Bureau that the facts legally warrant payments.” Without question the Bureau has the duty to responsibly administer the PSOB program according to the law and regulations. Concurrent with this duty is the Bureau’s responsibility to survivors: the Bureau must use its best and appropriate efforts to ensure that, where the facts warrant payment, claimants shall receive the benefit.

This means nothing more than that it is the PSOB office, the Bureau of Justice Assistance, as the entity responsible for administering PSOB claims, which is charged to make determinations on claims. This does not approve or compel PSOB fact finders to abdicate to legal counsel their responsibilities to decide claims. The claims process itself in most instances should be sufficient for PSOB fact finders to make the determination required, on the facts presented, under the law. This provision is not an invitation in any way, absent evidence of fraud, to subject claims to unnecessary, protracted legal or medical review. Nor should this provision be construed to alter the well-established standard of review applicable to the claims process, that where the facts of a case “more likely than not” warrant payment of a claim, the benefit should be approved. This is a crucial aspect of the administration of the PSOB benefit. And I would take a moment to respectfully disagree with language contained in the House Judiciary Committee’s report on the legislation we pass today. Language in the House Report to accompany H.R.4018, which appears to require the Department of Justice “to objectively test or verify each material factual assertion made and obtain relevant information beyond what claimants may provide” in order to discharge its legal duty, is inconsistent with the intent of the PSOB law. I would note my strong disagreement with this language, which fails to appreciate Congress’ original intent in enacting this law and should therefore be rejected.

When Congress enacted this law in 1976, it did not intend then, and does not today, that this benefit program be an adversarial proceeding for the families of fallen public safety officers or those public safety officers who have suffered a career-ending disability in the line of duty. While the PSOB program has been amended many times over the years to expand coverage to survivors and the public safety community, in too many ways the program has become administratively more complex and cumbersome for families to receive the benefits due them. The hearing record for the Senate Judiciary Committee’s examination of this program on October 4, 2007 is replete with testimony concerning the frustrations and unnecessary challenges too many surviving families have faced. Should it be enacted, the legislation we consider today and this statement reaffirm the original purpose of the PSOB law which, in its simplicity and true

to Congress' intent, clearly directed that in any case in which the Bureau of Justice Assistance determines that a public safety officer has died of a personal injury in the line of duty, the Bureau shall pay a benefit.

Federal officials, who administer the PSOB program, like all Federal officials involved with providing financial assistance, are under both an ethical and a legal duty to administer PSOB benefits in a manner consistent with the controlling law and regulations. Nothing in this legislation subjects Federal or contract employees determining PSOB claims to any greater liability or penalties than are currently applicable to other government employees. As Chairman of the Senate Judiciary Committee, with oversight responsibilities over the Department of Justice, I have confidence that the men and women of the Justice Department who administer PSOB claims execute their responsibilities with the highest level of integrity, and will continue to do so in the future with the discretion that the law provides. Justice Department officials should be confident that the good work that they do relative to this program, even where the process of review may question their judgment or conclusions, is subject to a law that gives them the freedom to exercise their discretion fairly and impartially. The operative standard for claims evaluation under the PSOB law is one of "more likely than not", and this standard by its terms allows ample room for PSOB fact finders to exercise broad discretion. Indeed, it is worth recognizing that the courts have reversed the denial of PSOB benefits on at least eight occasions. I am aware of no instance, however, where the approval of a PSOB benefit was overturned or determined to have been in error.

Let me conclude with a few general points about this important program. Congress enacted this law in 1976 because it recognized then, as we do now, that the welfare of America's public safety officers, and their families, is worthy of our support. Congress has acted over the last 36 years on several occasions to expand the law. The PSOB program was designed with that overarching principle in mind, and the Department of Justice, in administering the program, must make every effort to ensure that the families of fallen officers and those disabled are provided with the benefit to which they are entitled under the law in an efficient manner.

As the Department of Justice moves forward to implement the improvements that Congress considers today, I look forward to working with officials within the Department's Office of Justice Programs as they carry out their work. And I look forward to seeing these measures put into practice swiftly and with the best interests in mind of the men and woman across the country who serve all of us every day.

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