

Testimony of

The Honorable Domingo S. Herraiz

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Office of Justice Programs
U.S. Department of Justice
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Chairman Leahy, Ranking Member Specter, and distinguished Members of the Committee, thank you for the opportunity to appear today on behalf of the Department of Justice's Office of Justice Programs (OJP). I am Domingo Herraiz, Director of OJP's Bureau of Justice Assistance (BJA). As you know, BJA's mission is to provide leadership and services in grant administration and criminal justice policy development to support local, state, and tribal justice strategies to achieve safer communities. BJA's overall goals are to (1) reduce and prevent crime, violence, and drug abuse, and (2) improve the functioning of the criminal justice system.

I am pleased to be here today to discuss the Department of Justice's administration of the Public Safety Officers' Benefits (PSOB) Program and the implementation of the Hometown Heroes Survivors Benefits Act of 2003. BJA's PSOB Office is responsible for reviewing and processing hundreds of cases each year and works with national law enforcement, fire service, and first responder groups to educate public safety agencies regarding the program. In addition, we offer support to families and colleagues of fallen law enforcement officers, firefighters, and first responders.

Let me begin by saying that we recognize that developing the regulations and the review process for the PSOB Hometown Heroes claims has taken longer than what was originally anticipated, and I realize that these delays are of great concern to law enforcement, firefighters, other first responders, Members of Congress, and especially claimants who have lost loved ones. As the son of a firefighter and nephew of a police officer, let me assure you that I share your concern, and we have taken and will continue to take steps to decrease the time it takes for survivors to be given an answer on their claims. We are committed to resolving these claims expeditiously while making sure that we honor those who have given their lives to keep us safe.

History of the PSOB Program

Congress passed and the President signed into law the Public Safety Officers' Benefits Act in 1976. The Act was designed to offer peace of mind to men and women seeking careers in public safety and to make a strong statement about the value that America places on the contributions of those who serve their communities in potentially dangerous circumstances. Specifically, Congress was concerned that the hazards inherent in law enforcement and fire suppression and the low level of state and local death benefits might discourage qualified individuals from seeking careers in public safety, thus hindering the ability of communities to protect themselves.

The PSOB Program is administered by BJA and operates on the premise that it is essential that all public safety agencies be prepared to effectively help the family, fellow officers, and community move forward in the aftermath of a line of duty tragedy. This is a responsibility that the Department of Justice takes seriously, and will continue to work with local, state, and federal public safety agencies and organizations to become involved in promoting the protection of public safety officers' survivors should tragedies occur.

The PSOB Program provides both death benefits and disability benefits to eligible claimants. Death benefits are provided in the form of a one-time financial payment to eligible survivors of public safety officers whose deaths are the direct and proximate result of a personal injury sustained in the line of duty. Disability benefits are available for public safety officers who have been permanently and totally disabled as the result of catastrophic injury sustained in the line of duty.

The PSOB Program also includes the Public Safety Officers' Educational Assistance (PSOEA) Act. This Act expands the former Federal Law Enforcement Dependents Assistance Program to provide financial assistance for higher education to the spouses and children of federal, state, and local public safety officers who have been permanently disabled or killed in the line of duty. Educational assistance through the PSOEA Program is available to the spouse or children of a public safety officer after the PSOB death or disability claim process has been completed and benefits have been provided. The educational assistance may be used to defray relevant expenses, including tuition and fees, room and board, books, supplies, and other education-related costs.

State and local law enforcement officers and firefighters are covered for line-of-duty deaths occurring on or after September 29, 1976. Federal law enforcement officers and firefighters are covered for line-of-duty deaths occurring on or after October 12, 1984. Federal, state, and local public rescue squads and ambulance crews are covered for line-of-duty deaths occurring on or after October 15, 1986. As of October 30, 2000, employees of the Federal Emergency Management Agency (FEMA) and state, local, and tribal emergency management and civil defense agency employees working in cooperation with FEMA are considered public safety officers under the PSOB Program, provided they were performing official, hazardous duties related to a declared major disaster or emergency. Retroactive to September 11, 2001, chaplains also are included in the definition of public safety officer.

Passage of the Hometown Heroes Survivors Benefits Act of 2003

On December 15, 2003, the Hometown Heroes Act became law and expanded the PSOB Program to allow certain deaths from heart attacks and strokes to be considered line-of-duty deaths under the PSOB Program.

Beginning January 2004, OJP set out to amend the PSOB regulations to implement the provisions of the Hometown Heroes Act. After a few months, however, it became clear that a complete overhaul of the PSOB regulations was necessary for several reasons. First, the PSOB regulations had not been amended significantly in 30 years. Second, the PSOB Act itself had been amended eighteen times since its enactment in 1976, resulting in overlapping statutory and regulatory structures. In addition, soon after the closing of the comment period for the proposed rule, amendments to the PSOB Act were passed by Congress and were signed into law by the President on January 5, 2006. These latest changes required further revisions to the draft regulations.

OJP's goal with a top-to-bottom revision of the entire PSOB regulations was to avoid significant inconsistency within the regulatory scheme and to prevent confusion for public safety agencies and survivors. This revision was time-consuming, leading to delays, which, while necessary, have caused understandable frustrations to the field and claimants.

The Hometown Heroes Act contained a number of important terms that were not defined such as "nonroutine stressful or strenuous physical" activity, and "competent medical evidence." In drafting the regulatory definitions, OJP consulted extensively with several medical experts and focused particularly on the circumstances surrounding heart attacks and strokes among public safety officers. OJP also held several meetings with stakeholder groups to elicit input and understand any potential concerns of practitioners. On July, 26, 2005, we published the proposed Hometown Heroes regulations in the Federal Register, with a 60-day comment period.

Key to developing meaningful regulations was the consideration of the numerous comments we received from the public. During the public comment period, OJP received extensive feedback from a number of interested parties, including national police and fire associations; municipal law enforcement, fire, and rescue departments; PSOB hearing officers; survivors of fallen public safety officers; and concerned citizens. OJP carefully reviewed the comments, and made many substantive changes to the final regulations, which went into effect on September 11, 2006. Immediately thereafter, BJA initiated the review of any claims that may apply to the provisions of the Hometown Heroes Act. Experience is the best teacher and since then, we have learned much from our experience administering the program, and have worked to streamline our processes and clarify points of confusion.

Review of Hometown Heroes Claims

Upon enactment of the Hometown Heroes Act, the PSOB office began receiving claims. Unfortunately, the claims could not be processed until the regulations were finalized. This created the initial backlog. Each PSOB claim is unique, as it involves very different facts and circumstances surrounding the death of each public safety officer. As such, claims require different levels of review and outreach to process to their conclusion. Information specific to the fallen officer and agency is required and requested by the PSOB Office to establish the eligibility of all claims and beneficiaries according to the PSOB Act and its regulations. Most Hometown Heroes claims currently under review are waiting for additional evidence to be submitted by the agency for which the public safety officer worked. Without sufficient information, the PSOB Office cannot fully process a claim. Therefore, one of our highest priorities is conducting early and consistent outreach.

Once the PSOB Office makes a determination, it is not necessarily the final word on the claim. The PSOB regulations provide two levels of de novo administrative appeal for a claimant who wishes to seek relief from an unfavorable PSOB Office determination; the first to a PSOB hearing officer, and the second to the Director of BJA. This means that in each case, the appeal involves a comprehensive review of the entire case, including new information, as if no decision had previously been rendered. At each level, a claimant may provide any additional evidence and argument in support of the claim. Ultimately, a claimant may appeal the final agency decision to the United States Court of Federal Claims.

Improving Our Process

Public safety agencies and survivors are invaluable in helping BJA collect the best evidence as quickly as possible. As a result, we are working to strengthen our practices within and outside of BJA to improve customer service by implementing a number of initiatives to streamline the review process and make the PSOB Program as a whole more efficient.

In response to a DOJ directive issued in May 2004, BJA began working toward the goal of processing claims within 90 days of receiving all necessary information from agencies and survivors. To help accomplish this goal, a virtual PSOB application system was made available in May 2006 for agencies and survivors to submit claims for benefits. All report and claim forms associated with the fallen law enforcement officer or firefighter can be completed and submitted online at www.psob.gov.

To further our improvement efforts, a new, far more robust, case management system and database for the PSOB Office is in place as of September 30. In addition, OJP recently hired attorneys assigned to PSOB claim reviews; added private forensic pathologists on contract; brought on additional PSOB staff and contractors; and identified two additional PSOB hearing officers for appeals.

BJA has also formed vital partnerships with national law enforcement and firefighter organizations to provide visibility and emotional support to America's public safety agencies and families. Specifically, BJA partners with the National Fallen Firefighters Foundation (NFFF) and Concerns of Police Survivors (COPS) to provide support and assistance to families and agencies filing PSOB claims. COPS provides services and assistance for families and coworkers of fallen law enforcement officers through regional training sessions, special seminars, and extended programs for spouses, siblings, and children of fallen officers. NFFF provides peer counseling, training, and a wide range of assistance for the families and coworkers of firefighters killed in the line of duty. Some of NFFF's specific initiatives include developing and disseminating publications and reference materials for survivors and senior fire department managers, creating a public awareness strategy to promote the fire service and its critical role in public safety, and developing "L.A.S.T.", or Local Assistance State Teams, for direct support to agencies and survivors when a firefighter falls. The partnerships we have formed with NFFF, COPS, and other national public safety partners are critical in helping BJA provide effective PSOB education and outreach to agencies and families.

To further our educational and outreach efforts, OJP hosted a Hometown Heroes Stakeholder Briefing on May 3, 2007. Representatives from national firefighter, law enforcement, and Emergency Medical Services (EMS) organizations participated in our roundtable discussion. We discussed in detail the implementation of the Hometown Heroes Act and BJA's efforts to process claims in a more effective and efficient way. At the conclusion of the meeting, we promised to host a follow-up briefing before the end of the year. During the follow up conference call, which was held on September 26, 2007, we announced the creation of the Attorney General's Guide to Hometown Heroes to offer additional assistance to families and agencies tragically faced with submitting a PSOB claim. This Guide will be

written in consultation with the stakeholder groups that represent firefighters, law enforcement officers, and emergency personnel.

Additionally, based on our experience thus far, I have issued directives to my staff to address two major questions not specifically covered by the statute or regulations.

First, early in our time processing these claims we were advised by forensic pathologists to request up to 10 years of medical records. We quickly learned that these records were not needed in a large number of cases to resolve the claim. As a result, we chose to reduce the burden on claimants wherever possible, by not asking for them in most cases. I have recently provided binding direction to my staff to only request these records in rare circumstances. Moreover, in those cases where we do request records, we should review them for information in support of the claim.

Second, some people have expressed concern regarding our reading of the Hometown Heroes Act term "non-routine." Some have been concerned that we may have defined this term too narrowly. While we have mentioned the term "non-routine" in our written determinations, to-date no claim has been denied simply because we deemed the activity routine. However, to ensure future consistency in how we consider this term, I have recently provided binding direction to my staff regarding application of this term. Specifically, determinations as to whether an activity is "routine" will be informed less by whether the officer might engage in it frequently than by the nature of the activity itself. Instead, we will look primarily to the stress level or strenuousness associated with the physical activity. For example, this direction makes clear that all responses to emergency calls will be considered presumptively non-routine.

In closing, I would like to briefly share with you a very practical plan BJA established in coordination with OJP and the Department's leadership to expedite the processing of claims submitted for consideration under the Hometown Heroes Act. Beginning in August 2007, the PSOB Office identifies the 12 oldest--and most complete--Hometown Heroes claims each week, and drafts within that same week 12 determinations. By the close of each week, these claims are routed to OJP's Office of General Counsel (OGC) for review. Implementing this strategy of identifying 12 claims a week combined with the increase of staff, 144 Hometown Heroes claims will move from

the general "pending" queue, to specific claim review stages in just three months, thus eliminating those cases pending over one year. We are fully committed to this "12 in a Week" strategy until all Hometown Heroes claims have been processed, and Hometown Heroes claims normalize to approximately seven new cases per month by March 31, 2008.

With the completion of the Hometown Heroes regulations and the continued refinement of the process for reviewing these claims, the entire PSOB process continues to be streamlined as similar questions and considerations arise. In turn, Hometown Heroes claims submitted in upcoming months will experience, in general, a more expedited review. Please be assured that the Department of Justice is committed to ensuring that all PSOB claims, including those under the provisions of the Hometown Heroes Act, are processed in a timely, efficient, and compassionate manner.

Chairman Leahy, Ranking Member Specter, thank you again for the opportunity to testify today. I am happy to address any questions that you or Members of the Committee may have.