



ATTORNEY GENERAL'S GUIDE TO THE HOMETOWN HEROES SURVIVORS' BENEFITS ACT

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Public Safety Officers' Benefits Program
Assisting America's Public Safety Community
since 1976

IN VALOR,
THERE IS HOPE.

— *TACITUS*

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THE HOMETOWN HEROES
SURVIVOR'S BENEFITS ACT



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*Assisting America's Public Safety Community
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Congress passed, and the President signed into law, the Public Safety Officers' Benefits (PSOB) Act in 1976. The Act was designed to offer peace of mind to men and women seeking careers as public safety officers and to make a strong statement about the value that America places on their commitment to serve their communities in potentially dangerous circumstances.

The PSOB Program is administered by the Office of Justice Programs' (OJP) Bureau of Justice Assistance (BJA). The foundation of the PSOB Program is that it is essential that the Justice Department and public safety agencies throughout the country are prepared to help the loved ones of fallen officers move forward in the aftermath of tragedies.

The PSOB Program provides death benefits 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. The program also provides benefits to public safety officers who are permanently and totally disabled because of injuries sustained in the line of duty. Finally, the PSOB Program provides financial assistance to help pay higher education costs for the spouses and children of public safety officers for whom PSOB death or disability benefits have been paid.



Over the years, the statutory definition of “public safety officer” has expanded. Currently, that definition includes federal, state, and local law enforcement officers; fire-fighters; public rescue squads; ambulance crews; and chaplains of these departments. Under certain circumstances, some employees of the Federal Emergency Management Agency and some related emergency management and civil defense agency employees are also eligible.

On December 15, 2003, the Hometown Heroes Survivors' Benefits Act became law. The legislation creates a presumption that a public safety officer who suffered a fatal heart attack or stroke up to 24 hours after on-duty, nonroutine stressful or strenuous physical activity or training has died as a direct and proximate result of a personal injury sustained in the line of duty. On July 26, 2005, OJP published new proposed PSOB regulations in the Federal Register, with a 60-day public comment period. The resulting final PSOB regulation, including the provisions that implement the Hometown Heroes Act, was published in the Federal Register on August 10, 2006 and became effective on September 11, 2006.

When a public safety officer dies (on or after December 15, 2003) as the direct result of heart attack or stroke, the PSOB Program looks at the claim under the Hometown Heroes Act provisions of the PSOB Act. In addition to the information generally required by the PSOB Program, survivors who apply under the Hometown Heroes provisions need to submit information so that the PSOB Office can determine if all of the following requirements are met:



- 1. Cause of death:** The public safety officer died as the direct and proximate result of a heart attack or stroke.
- 2. Type of line-of-duty activity:** While on duty, the public safety officer either (1) engaged in line-of-duty activity that included law enforcement, fire suppression, rescue activity, hazardous material response, emergency medical services, disaster relief activity, or other emergency response activity, or (2) participated in a formal training exercise. The Hometown Heroes Act specifically excludes activities that are of a clerical, administrative, or non-manual nature.

3. Nonroutine stressful or strenuous physical activity: The line-of-duty activity or participation in a formal training exercise involved nonroutine stressful physical activity or nonroutine strenuous physical activity.

Nonroutine stressful physical activity is activity that:

- ◆ Is not performed as a matter of routine;
- ◆ Entails non-negligible physical exertion;
- ◆ For line-of-duty activity, poses or appears to pose significant threats or hazards or involves reasonably foreseeable risks of such threats or hazards;
- ◆ For training exercises, realistically simulates significant threats or hazards; and
- ◆ Provokes or causes an unusually high level of alarm, fear, or anxiety.

Nonroutine strenuous physical activity means activity that:

- ◆ Is not performed as a matter of routine; and
- ◆ Entails an unusually high level of physical exertion.

4. Timing of the heart attack or stroke: The heart attack or stroke occurred while the public safety officer was engaging in this activity or participating in this training, while on the same duty shift, or within 24 hours after the conclusion of this activity or training.

HOW DOES THE PSOB OFFICE DETERMINE WHAT IS “NONROUTINE”?

A directive issued in October 2007 provides information about this term. The directive includes the following language:

1. No activity shall be understood to be “performed as a matter of routine”... solely by virtue of being described by the public safety agency as being “routine” or “ordinary.”
2. The determination of an activity’s “routineness” should be informed less by the frequency with which it may be performed than by its stressful or strenuous character...Responding to an emergency call shall presumptively be treated as nonroutine...

For the full text of this directive go to www.psob.gov.



5. Competent medical evidence: The Hometown Heroes Act provides that if the information in the claim establishes that the circumstances of the public safety officer's death meet all of the requirements set out in items 1-4 above, then the officer's death is presumed to be covered under the PSOB Act, so long as "such presumption is not overcome by competent medical evidence to the contrary."

This provision means that in cases where information shows that something other than the public safety officer's work caused the heart attack or stroke, the death would not be covered under the PSOB Act.

WHEN DOES THE PSOB OFFICE ASK FOR MEDICAL HISTORY?

A directive issued in October 2007 provides information about requesting medical history. The directive includes the following language:

1. Where there is nothing in the claim file that affirmatively suggests that something other than the line-of-duty (activity) may have caused the fatal heart attack or stroke, or that it was more likely than not that the heart attack or stroke was imminent, no medical history records shall be requested of the claimant.
2. In determining what may make an affirmative suggestion described in 1, the mere presence of cardiovascular disease/risk factors (even extremely severe)—such as might (for example) be discovered in an autopsy or mentioned in a coroner’s report or death certificate—shall not be considered, unless information in the claim file itself affirmatively suggests that the claimant’s decedent—(a) actually knew or should have known of such presence; and (b) appears to have worsened or aggravated the same by his own intentional and reckless behavior.
3. Any medical history records requested of the claimant will be reviewed for mitigating evidence in favor of the claim.

Additionally, in the rare event that the PSOB Office does request medical history, the request will be for up to three years of history. Only in very rare situations would additional information be requested.

PSOB Benefits Specialists are available to assist you and the public safety agency that will help you in applying for benefits. Benefits Specialists may be reached toll free at 888-744-6513 for assistance with any part of the PSOB claim process. The following is a step-by-step guide to collecting information regarding the officer's line-of-duty death and applying for benefits.



1. It may be helpful for you to meet with the officer's agency to discuss potential PSOB eligibility and the process. You or the agency can call the PSOB Office at 888-744-6513 with any questions.
2. It may also be helpful to contact a national organization that represents public safety officers' survivors. These organizations are informed about the PSOB Program and have individuals who can assist you. Concerns of Police Survivors can be reached at 573-346-4911 and the National Fallen Firefighters Foundation can be reached at 301-447-1365. These organizations can assist you throughout the process and the Department of Justice provides funding to them to help them do so.

3. You may wish to execute a Consent to Release Information form if you would like Concerns of the Police Survivors, National Fallen Firefighters Foundation, or another organization to be able to call PSOB on your behalf and receive updates and information. See www.psob.gov.

WHO WILL RECEIVE BENEFITS IF THE CLAIM IS APPROVED?

Benefits will be paid to survivors according the following criteria:

1. If there is a spouse and no child* or children, all to the spouse.
2. If there is a spouse and child or children, one-half to the spouse and one-half to the child or children in equal shares.
3. If no spouse, and children only, all to the child or children in equal shares.
4. If no spouse or children, then to the individual designated by the officer as beneficiary on file with the officer's agency, or if no designation to the individual designated as the beneficiary on the most recently executed life insurance policy on file with the officer's agency.
5. If none of the above, to the officer's parents in equal shares.

*"Child" is defined as any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased public safety officer who, at the time of the officer's death, is 18 years old or under, or over 18 and either a full-time student or incapable of self-support due to a physical or mental disability.

4. Consider who the eligible claimants may be. For more information on who is eligible for PSOB benefits call the PSOB Office or go to *www.psob.gov*.

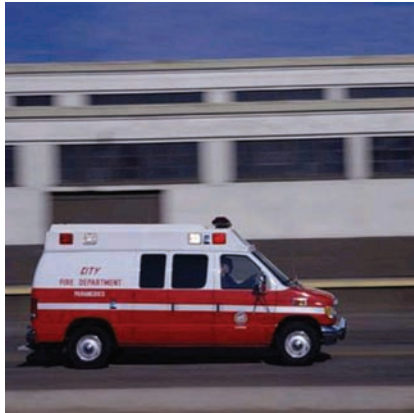
5. Find the Report of the Officer's Death and Claim for Death Benefits forms to file through a paper or online process.

- ◆ Find where to complete the claim for PSOB benefits online at *www.psob.gov*.
- ◆ Download the PSOB paper claim forms at *www.psob.gov*.
- ◆ Call or ask the officer's agency to call the PSOB Office at 888-744-6513 to request paper claim forms.

6. Gather the basic information you will need to complete the Claim for Death Benefits form:

- ◆ Officer's social security number.
- ◆ Date of injury, which is the date of the onset of the heart attack or stroke.
- ◆ Date of death.
- ◆ Name and physical address of the employing agency.
- ◆ Addresses and social security numbers for all eligible claimants.

7. Gather the documentation needed to apply:



- ◆ Death certificate.
- ◆ Autopsy report, which the officer's agency may be able to help provide; if the report does not exist, an agency statement explaining why it does not exist must be submitted on agency letterhead.
- ◆ Toxicology report, which the officer's agency may be able to help provide; if the report does not exist, an agency statement explaining why it does not exist must be submitted on agency letterhead.
- ◆ Officer's marriage certificate, if married at the time of death.
- ◆ Divorce decrees for previous marriage(s), including references to physical custody of children, if applicable.
- ◆ Birth certificates for all of the officer's children and step-children.

8. Discuss with the officer's agency the rest of the information needed from them to apply:

- ◆ Statement of Circumstances: This document is extremely important in supporting the claim. It should describe fully the activities of the officer while on duty or activities related to duty during the 24-hour period prior to the onset of the

heart attack or stroke. It is critical that this statement include a detailed explanation of any activities that the agency believes involved non-routine strenuous or stressful physical activity. The description of the activities should help the reviewer to understand how the officer meets the requirements of the program as they are explained above in the section on eligibility, including the level of stress involved and the level of physical exertion required by the activities.

- ◆ **Agency Reports:** The agency should provide copies of all of the investigation, incident, or accident reports for the officer's on-duty activities for the 24-hour period prior to the onset of the heart attack or stroke. These are reports that should already exist and can simply be copied and included with the claim.

9. Complete and submit the full Claim for Death Benefits package by completing the Claim for Death Benefits form and attaching all of the documentation listed in the checklist below. The package may be submitted online, by fax, or by mail with a return receipt requested. The address for deliveries, which may also be used by those submitting the package online to send supporting documentation not available in an electronic format is:

Public Safety Officers' Benefits Program
Bureau of Justice Assistance
810 7th Street NW
Washington, DC 20531
Fax: 202-616-0314
www.psob.gov (online application submission)

10. Contact the PSOB Program at 888-744-6513 to ensure receipt of the package and to learn the name and phone number of a PSOB staff member whom you can call for help.

PACKAGE CHECKLIST

- ◆ Report of the Officer's Death and Claim for Death Benefits forms.
- ◆ Death certificate.
- ◆ Autopsy report.
- ◆ Toxicology report.
- ◆ Officer's marriage certificate, if married at the time of death.
- ◆ Divorce decrees for previous marriages.
- ◆ Birth certificates for all of the officer's children and step-children.
- ◆ Statement of Circumstances.
- ◆ Investigation, incident, or accident reports for the officer's on-duty activities for the 24-hour period prior to the onset of the heart attack or stroke.

Just as agencies, officers, and survivors are unique, PSOB claims are unique. The facts and circumstances surrounding the death of a public safety officer vary widely from case to case and as a result, claims require review. 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. Because the PSOB Office cannot fully process a claim without key information, one of BJA's highest priorities is conducting early and consistent outreach.



PSOB KEY INFORMATION

1. The claimants and the officer's agency, often along with National Fallen Firefighters Foundation or Concerns of Police Survivors, work together to initiate a PSOB claim.
2. The PSOB Office receives information related to the circumstances of the death.
3. The PSOB Office reviews the information submitted. They will contact you if there are follow-up questions or they need additional information.
4. As appropriate, the PSOB Office works with forensic pathologists to review autopsy and toxicology reports and to understand medical issues relevant to determination of claims. If you have questions about whether your claim is subject to this review or questions about this process, you may contact the PSOB Office.
5. The PSOB Office works with OJP's Office of General Counsel (OGC) to determine if circumstances of the death meet the requirements of the law.
6. The PSOB Office makes an agency determination, signed by the benefits specialist, PSOB director, and OGC reviewing attorney.
7. If approved, the payment is processed and paid to the eligible claimants.
8. If not approved, the PSOB Office will send notice along with instructions on how to appeal its determination. If desired, the PSOB Office will discuss the appeals process directly with the claimant, the agency, or both.

Appeals

The PSOB Office determination is not necessarily the final word on the claim. This initial determination is based on a review of the information submitted to the PSOB Office by claimants and the public safety officer's employing agency. For claims that have been denied, the PSOB regulation provides for two levels of administrative appeal. At both levels additional argument or information may be submitted for consideration and the entire claim is reexamined. Any claimant unsuccessful in the administrative appeal process may then appeal BJA's final agency decision to the United States Court of Appeals for the Federal Circuit. Requests for appeals must be filed within 33 days of the date on the letter accompanying the determination. If a claimant needs extra time, the BJA Director can grant an extension for good cause. It is not necessary to retain legal counsel to represent you in appeal; it is, however, your right.



PSOB APPEALS PROCESS

1. A claimant is notified by a letter that the claim has not been approved. Enclosed with the letter is the determination that provides the basis for the decision and information about filing an appeal. The PSOB appeals specialist's name, telephone number, and email address are provided in the letter so the claimant can contact the PSOB Office with any questions about the appeal process, or provide notice of appeal.
2. A claimant has 33 days from the date of the letter to provide notice to the PSOB Office that he or she wishes to file an appeal of the decision (an extension may be granted by the BJA Director for good cause).
3. When the PSOB Office receives the claimant's notice of intent to appeal, a hearing officer is identified and assigned to the claim.
4. The hearing officer contacts the claimant directly to discuss the appeals process and next steps.
5. The hearing officer will reconsider the entire claim, and will accept and consider any newly submitted information. At the request of the claimant, a hearing may be held at a date and location convenient for the claimant.
6. Once the hearing officer's determination has been submitted, the claimant is notified by letter of the outcome. Should the hearing officer reverse the initial decision and the BJA Director agrees, the claim is approved and the benefit is paid.
7. If the hearing officer does not reverse the original determination, the claimant can request a second appeal to the BJA Director.
8. If the claimant requests a second-level appeal to the BJA Director, the Director will also reconsider the entire claim, and will accept and consider any newly submitted information before making a final decision and notifying the claimant in writing.

Throughout the appeals process, the claimant can always contact the PSOB Office with questions.

WHAT'S A DETERMINATION?

Once the PSOB Office receives the information requested for a claim, a "determination" is prepared that includes the:

- ◆ Fallen officer's name, title, department, city, and state.
- ◆ Survivors identified on the claim form.
- ◆ Case summary, with details regarding the fallen officer's death.
- ◆ Outcome stating whether the claim is approved or not approved, and why.
- ◆ Signatures of PSOB and OGC staff who reviewed the claim.
- ◆ Information on how to appeal the outcome if not approved.
- ◆ Information on what a representative (attorney) must do before seeking payment for services provided to the claimant.

Public Safety Officers' Benefits Office

Bureau of Justice Assistance
Office of Justice Programs

U.S. Department of Justice
810 7th Street NW
Washington, DC 20531

Phone: 202-307-0635
Toll Free: 888-744-6513
Fax: 202-616-0314
E-mail Address: AskPSOB@usdoj.gov
Web Address: www.psob.gov

Concerns of Police Survivors, Inc.

Concerns of Police Survivors provides services and assistance for families and coworkers of fallen law enforcement officers through regional training sessions, special seminars, and extended programs for spouses, parents, siblings, children, and other family members of fallen officers. In 2008, Concerns of Police Survivors will be forming teams through its chapters consisting of practitioners and survivors to assist agencies and families throughout the PSOB claim process.

P.O. Box 3199
Camdenton, MO 65020

Phone: 573-346-4911
E-mail Address: cops@nationalcops.org
Web Address: www.nationalcops.org



National Fallen Firefighters Foundation

National Fallen Firefighters Foundation 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 National Fallen Firefighters Foundation'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 the development of L.A.S.T., or Local Assistance State Teams, for direct support to agencies and survivors when a firefighter falls. One of the main missions of National Fallen Firefighters Foundation's L.A.S.T. Program is to assist departments with filing PSOB benefits for the family.

P.O. Drawer 498
Emmitsburg, MD 21727

Phone: 301-447-1365

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Web Address: www.firehero.org

