Suspend the Rules and Pass the Bill, S. 1511, With an Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

117TH CONGRESS
1ST SESSION

S. 1511

IN THE SENATE OF THE UNITED STATES

AN ACT

To amend the Omnibus Crime Control and Safe Streets Act of 1968 with respect to payments to certain public safety officers who have become permanently and totally disabled as a result of personal injuries sustained in the line of duty, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3
4 SECTION 1. SHORT TITLE.
5 This Act may be cited as the “Protecting America’s First Responders Act of 2021”.
SEC. 2. PAYMENT OF DEATH AND DISABILITY BENEFITS
UNDER PUBLIC SAFETY OFFICERS’ DEATH
BENEFITS PROGRAM.

Section 1201 of title I of the Omnibus Crime Control
and Safe Streets Act of 1968 (34 U.S.C. 10281) is amend-
ed—

(1) in subsection (a), in the matter preceding
paragraph (1)—

(A) by striking “the Bureau shall pay’’;

and

(B) by inserting “, and calculated in ac-
cordance with subsection (i), shall be payable by
the Bureau” after “subsection (h)’’.

(2) in subsection (b)—

(A) by striking “the Bureau shall pay the
same benefit” and inserting “a benefit shall be
payable’’;

(B) by striking “that is payable under sub-
section (a) with respect to the date on which
the catastrophic injury occurred,” and inserting
“in the same amount that would be payable, as
of the date such injury was sustained (includ-
ing’’;

(C) by inserting “, and calculated in ac-
cordance with subsection (i)), if such deter-
mination were a determination under subsection (a)” before “: Provided, That”; and

(D) by striking “necessary:” and all that follows and inserting “necessary.”;

(3) in subsection (c), by striking “$3,000” and inserting “$6,000, adjusted in accordance with subsection (h),”;

(4) in subsection (h), by striking “subsection (a)” and inserting “subsections (a) and (b) and the level of the interim benefit payable immediately before such October 1 under subsection (c)”;

(5) by striking subsection (i) and inserting the following:

“(i) The amount payable under subsections (a) and (b), with respect to the death or permanent and total disability of a public safety officer, shall be the greater of—

“(1) the amount payable under the relevant subsection as of the date of death or of the catastrophic injury of the public safety officer; or

“(2) in any case in which the claim filed thereunder has been pending for more than 365 days at the time of final determination by the Bureau, the amount that would be payable under the relevant subsection if the death or the catastrophic injury of the public safety officer had occurred on the date on
which the Bureau makes such final determination.”;

and

(6) in subsection (m), by inserting “, (b),” after “subsection (a)”.

SEC. 3. DEFINITIONS WITH RESPECT TO PUBLIC SAFETY OFFICERS’ DEATH BENEFITS PROGRAM.

Section 1204 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10284) is amend-
ed—

(1) by redesignating paragraphs (1), (2), (3), (4), (5), (6), (7), (8), and (9) as paragraphs (4), (5), (6), (7), (8), (9), (10), (13), and (14), respec-
tively;

(2) by striking paragraph (4), as so redesig-
nated, and inserting:

“(4) ‘catastrophic injury’ means an injury, the direct and proximate result of which is to perma-
nently render an individual functionally incapable (including through a directly and proximately result-
ing neurocognitive disorder), based on the state of medicine on the date on which the claim is deter-
mained by the Bureau, of performing work, including sedentary work: Provided, That, if it appears that a claimant may be functionally capable of performing work—
“(A) the Bureau shall disregard work where any compensation provided is de minimis, nominal, honorary, or mere reimbursement of incidental expenses, such as—

“(i) work that involves ordinary or simple tasks, that because of the claimed disability, the claimant cannot perform without significantly more supervision, accommodation, or assistance than is typically provided to an individual without the claimed disability doing similar work;

“(ii) work that involves minimal duties that make few or no demands on the claimant and are of little or no economic value to the employer; or

“(iii) work that is performed primarily for therapeutic purposes and aids the claimant in the physical or mental recovery from the claimed disability; and

“(B) the claimant shall be presumed, absent clear and convincing medical evidence to the contrary as determined by the Bureau, to be functionally incapable of performing such work if the direct and proximate result of the injury renders the claimant—
“(i) blind;
“(ii) paraplegic; or
“(iii) quadriplegic;”;

(3) in paragraph (6), as so redesignated, by striking “at the time of the public safety officer’s fatal or catastrophic injury” and inserting “at the time of the public safety officer’s death or fatal injury (in connection with any claim predicated upon such death or injury) or the date of the public safety officer’s catastrophic injury or of the final determination by the Bureau of any claim predicated upon such catastrophic injury”;

(4) in paragraph (7), as so redesignated, by inserting “, including an individual who, as such a member, engages in scene security or traffic management as the primary or only duty of the individual during emergency response” before the semicolon;

(5) in paragraph (9), as so redesignated by striking “delinquency),,” and inserting “delinquency),”;

(6) in paragraph (13), as so redesignated, by inserting “, and includes (as may be prescribed by regulation hereunder) a legally organized volunteer fire department that is a nonprofit entity and pro-
vides services without regard to any particular relationship (such as a subscription) a member of the public may have with such a department” before the semicolon;

(7) in paragraph (14), as so redesignated,—

(A) by striking subparagraph (A) and inserting:

“(A) an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, as a firefighter, or as a chaplain: Provided, That (notwithstanding section 1205(b)(2) or (3)) the Bureau shall, absent clear and convincing evidence to the contrary as determined by the Bureau, deem the actions outside of jurisdiction taken by any such law enforcement officer or firefighter, to have been taken while serving such public agency in such capacity, in any case in which the principal legal officer of such public agency, and the head of such agency, together, certify that such actions—

“(i) were not unreasonable;

“(ii) would have been within the authority and line of duty of such law enforcement officer or such firefighter to
take, had they been taken in a jurisdiction
where such law enforcement officer or fire-
fighter was authorized to act, in the ordi-
nary course, in an official capacity; and

“(iii) would have resulted in the pay-
ment of full line-of-duty death or disability
benefits (as applicable), if any such bene-
fits typically were payable by (or with re-
spect to or on behalf of) such public agen-
cy, as of the date the actions were taken;”;

(B) by redesignating subparagraphs (B), (C), (D), and (E) as subparagraphs (C), (D), (E), and (F), respectively;

(C) by inserting after subparagraph (A), the following new subparagraph:

“(B) a candidate officer who is engaging in
an activity or exercise that itself is a formal or
required part of the program in which the can-
didate officer is enrolled or admitted, as pro-
vided in this section;”; and

(D) by striking subparagraph (E), as so
redesignated, and inserting the following:

“(E) a member of a rescue squad or ambu-
lance crew who, as authorized or licensed by
law and by the applicable agency or entity, is
engaging in rescue activity or in the provision
of emergency medical services: Provided, That
(notwithstanding section 1205(b)(2) or (3)) the
Bureau shall, absent clear and convincing evi-
dence to the contrary as determined by the Bu-
reau, deem the actions outside of jurisdiction
taken by any such member to have been thus
authorized or licensed, in any case in which the
principal legal officer of such agency or entity,
and the head of such agency or entity, together,
certify that such actions—

“(i) were not unreasonable;

“(ii) would have been within the au-
thority and line of duty of such member to
take, had they been taken in a jurisdiction
where such member was authorized or li-
censed by law and by a pertinent agency or
entity to act, in the ordinary course; and

“(iii) would have resulted in the pay-
ment of full line-of-duty death or disability
benefits (as applicable), if any such bene-
fits typically were payable by (or with re-
spect to or on behalf of) such applicable
agency or entity, as of the date the action
was taken;”;}
(8) by inserting before paragraph (4), as so re-designed, the following new paragraphs:

“(1) ‘action outside of jurisdiction’ means an action, not in the course of any compensated employment involving either the performance of public safety activity or the provision of security services, by a law enforcement officer, firefighter, or member of a rescue squad or ambulance crew that—

“(A) was taken in a jurisdiction where—

“(i) the law enforcement officer or firefighter then was not authorized to act, in the ordinary course, in an official capacity; or

“(ii) the member of a rescue squad or ambulance crew then was not authorized or licensed to act, in the ordinary course, by law or by the applicable agency or entity;

“(B) then would have been within the authority and line of duty of—

“(i) a law enforcement officer or a firefighter to take, who was authorized to act, in the ordinary course, in an official capacity, in the jurisdiction where the action was taken; or
“(ii) a member of a rescue squad or ambulance crew to take, who was authorized or licensed by law and by a pertinent agency or entity to act, in the ordinary course, in the jurisdiction where the action was taken; and

“(C) was, in an emergency situation that presented an imminent and significant danger or threat to human life or of serious bodily harm to any individual, taken—

“(i) by a law enforcement officer—

“(I) to prevent, halt, or respond to the immediate consequences of a crime (including an incident of juvenile delinquency); or

“(II) while engaging in a rescue activity or in the provision of emergency medical services;

“(ii) by a firefighter—

“(I) while engaging in fire suppression; or

“(II) while engaging in a rescue activity or in the provision of emergency medical services; or
“(iii) by a member of a rescue squad or ambulance crew, while engaging in a rescue activity or in the provision of emergency medical services;

“(2) ‘candidate officer’ means an individual who is enrolled or admitted, as a cadet or trainee, in a formal and officially established program of instruction or of training (such as a police or fire academy) that is specifically intended to result upon completion, in the—

“(A) commissioning of such individual as a law enforcement officer;

“(B) conferral upon such individual of official authority to engage in fire suppression (as an officer or employee of a public fire department or as an officially recognized or designated member of a legally organized volunteer fire department); or

“(C) granting to such individual official authorization or license to engage in a rescue activity, or in the provision of emergency medical services, as a member of a rescue squad, or as a member of an ambulance crew that is (or is a part of) the agency or entity that is sponsoring the individual’s enrollment or admission;
“(3) ‘blind’ means an individual who has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens or whose eye is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees;”; and

(9) in the matter following paragraph (10), as so redesignated, by inserting the following new paragraphs:

“(11) ‘neurocognitive disorder’ means a disorder that is characterized by a clinically significant decline in cognitive functioning and may include symptoms and signs such as disturbances in memory, executive functioning (that is, higher-level cognitive processes, such as, regulating attention, planning, inhibiting responses, decision-making), visual-spatial functioning, language, speech, perception, insight, judgment, or an insensitivity to social standards; and

“(12) ‘sedentary work’ means work that—

“(A) involves lifting articles weighing no more than 10 pounds at a time or occasionally lifting or carrying articles such as docket files, ledgers, or small tools; and
“(B) despite involving sitting on a regular basis, may require walking or standing on an occasional basis.”.

SEC. 4. DUE DILIGENCE IN PAYING BENEFIT CLAIMS UNDER PUBLIC SAFETY OFFICERS’ DEATH BENEFITS PROGRAM.

Section 1206(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10288(b)) is amended by striking “the Bureau may not” and all that follows and inserting the following: “the Bureau—

“(1) may use available investigative tools, including subpoenas, to—

“(A) adjudicate or to expedite the processing of the benefit claim, if the Bureau deems such use to be necessary to adjudicate or conducive to expediting the adjudication of such claim; and

“(B) obtain information or documentation from third parties, including public agencies, if the Bureau deems such use to be necessary to adjudicate or conducive to expediting the adjudication of a claim; and

“(2) may not abandon the benefit claim unless the Bureau has used investigative tools, including subpoenas, to obtain the information or documenta-
tion deemed necessary to adjudicate such claim by
the Bureau under subparagraph (1)(B).”.

SEC. 5. EDUCATIONAL ASSISTANCE TO DEPENDENTS OF
CERTAIN PUBLIC SAFETY OFFICERS.

Section 1216(b) of title I of the Omnibus Crime Con-
trol and Safe Streets Act of 1968 (34 U.S.C. 10306(b))
is amended, in the first sentence, by striking “may” and
inserting “shall (unless prospective assistance has been
provided)”.

SEC. 6. TECHNICAL CORRECTION.

Section 1205(e)(3)(B) of the Omnibus Crime Control
is amended by striking “subparagraph (B)(ix)” and in-
serting “subparagraph (I)”.

SEC. 7. SUBPOENA POWER.

Section 806 of title I of the Omnibus Crime Control
and Safe Streets Act of 1968 (34 U.S.C. 10225) is amend-
ed—

(1) by inserting “Attorney General, the” before
the “Bureau of Justice Assistance”;

(2) by striking “may appoint” and inserting
“may appoint (to be assigned or employed on an in-
terim or as-needed basis) such hearing examiners
(who shall, if so designated by the Attorney General,
be understood to be comprised within the meaning
of “special government employee” under section 202
of title 18, United States Code”;

(3) by striking “under this chapter. The” and
inserting “or other law. The Attorney General, the”; and

(4) by inserting “conduct examinations” after
“examine witnesses,”.

SEC. 8. EFFECTIVE DATE; APPLICABILITY.

(a) In General.—Except as otherwise provided in
this section, the amendments made by this Act shall take
effect on the date of enactment of this Act.

(b) Applicability.—

(1) Certain Injuries.—The amendments
made to paragraphs (2) and (7) of section 1204 of
title I of the Omnibus Crime Control and Safe
Streets Act of 1968 (34 U.S.C. 10284) shall apply
with respect to injuries occurring on or after Janu-
ary 1, 2008.

(2) Matters Pending.—Except as provided in
paragraph (1), the amendments made by this Act
shall apply to any matter pending, before the Bu-
reau or otherwise, on the date of enactment of this
Act, or filed (consistent with pre-existing effective
dates) or accruing after that date.

(c) Effective Date for WTC Responders.—
(1) CERTAIN NEW CLAIMS.—Not later than two years after the effective date of this Act, a WTC responder may file a claim, under section 1201(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10281(b)), that is predicated on a personal injury sustained in the line of duty by such responder as a result of the September 11, 2001, attacks, where—

(A) no claim under such section 1201(b) so predicated has previously been filed; or

(B) a claim under such section 1201(b) so predicated had previously been denied, in a final agency determination, on the basis (in whole or in part) that the claimant was not totally disabled.

(2) CLAIMS FOR A DECEASED WTC RESPONDER.—Not later than two years after the effective date of this Act, a claim may be filed, constructively under section 1201(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10281(a)), where a WTC responder who otherwise could have filed a claim pursuant to paragraph (1) has died before such effective date (or dies not later than 365 days after such effective date), or where a WTC responder has filed such a claim but
dies while it is pending before the Bureau: Provided, That—

(A) no claim under such section 1201(a) otherwise shall have been filed, or determined, in a final agency determination; and

(B) if it is determined, in a final agency determination, that a claim under such paragraph (1) would have been payable had the WTC responder not died, then the WTC responder shall irrebuttably be presumed (solely for purposes of determining to whom benefits otherwise pursuant to such paragraph (1) may be payable under the claim filed constructively under such section 1201(a)) to have died as the direct and proximate result of the injury on which the claim under such paragraph (1) would have been predicated.

(3) Difference in Benefit Pay.—In the event that a claim under section 1201(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10281(b)) and predicated on an injury sustained in the line of duty by a WTC responder as a result of the September 11, 2001, attacks was approved, in a final agency determination, before the effective date of this Act, the Bureau
shall, upon application filed (not later than three years after such effective date of this Act) by the payee (or payees) indicated in subparagraphs (A) or (B), pay a bonus in the amount of the difference (if any) between the amount that was paid pursuant to such determination and the amount that would have been payable had the amendments made by this Act, other than those indicated in subsection (b)(1), been in effect on the date of such determination—

(A) to the WTC responder, if living on the date the application is determined, in a final agency determination; or

(B) if the WTC responder is not living on the date indicated in subparagraph (A), to the individual (or individuals), if living on such date, to whom benefits would have been payable on such date under section 1201(a) of such title I (34 U.S.C. 10281(a)) had the application been, instead, a claim under such section 1201(a).

(4) SPECIAL LIMITED RULE OF CONSTRUCTION.—A claim filed pursuant to paragraph (1) or (2) shall be determined as though the date of catastrophic injury of the public safety officer were the
date of enactment of this Act, for purposes of deter-
miming the amount that may be payable.

SEC. 9. SAFEGUARDING AMERICA’S FIRST RESPONDERS.

Section 3 of Safeguarding America’s First Respond-
ers Act of 2020 (Public Law 116-157) is amended—

(1) in subsection (a)(1), by striking “between
January 1, 2020, and December 31, 2021” and in-
serting “during the period beginning on January 1,
2020, and ending on the termination date”; and

(2) in subsection (b)(1), by striking “between
January 1, 2020, and December 31, 2021” and in-
serting “during the period beginning on January 1,
2020, and ending on the termination date”; and

(3) by adding at the end the following:

“(c) TERMINATION DATE.—For purposes of this sec-
tion, the term ‘termination date’ means the earlier of—

“(1) the date on which the public health emer-
gency declared by the Secretary of Health and
Human Services under section 319 of the Public
Health Service Act (42 U.S.C. 247d) on January
31, 2020, with respect to the Coronavirus Disease
(COVID-19), expires; and

“(2) December 31, 2023.”.