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House of Representatives

The House was not in session today. Its next meeting will be held on Monday, May 18, 1998, at 12 noon.

Senate

FRIDAY, MAY 15, 1998

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious God, thank You for this moment of prayer in which we can affirm our unity. Thank You for giving us the same calling: to express our love for You by faithful service to our country. So much of our time is spent debating our differences that we often forget the bond of unity that binds us together. We are one in our belief in You, the ultimate and only Sovereign of this Nation. You are the magnetic and majestic Lord. You enable us to work together.

Take charge of the control centers of our minds. Think Your thoughts through us. Take charge of our tongues so that we may speak truth with clarity, without rancor and anger. May our debates be an effort to reach agreement rather than simply to win an argument. Help us to think of each other as fellow Americans seeking Your best for our Nation.

Enable us to catch the drumbeat of Your direction and march to the cadence of Your guidance. Here are our lives. Invade them with Your calming Spirit, strengthen them with Your powerful presence, and imbue them with Your gift of faith to trust You to bring unity out of diversity. In the name of our Lord and Savior. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized.

Mr. ALLARD. Thank you, Mr. President.

SCHEDULE

Mr. ALLARD. Mr. President, for the information of all Senators, this morning the Senate will be in a period of morning business until 12 noon. As a reminder, the majority leader has announced there will be no rollcall votes during today's session. A cloture motion was filed yesterday on the motion to proceed to the tobacco legislation and that vote will occur on Monday at a time to be determined by the two leaders, but not prior to 5 p.m.

Also at noon on Monday, the Senate will begin consideration of Senate bill 1723, the Abraham immigration legislation, under the consent agreement of May 13. Therefore, Members can expect a rollcall vote on cloture and additional votes with respect to the immigration legislation Monday evening.

BULLETPROOF VEST PARTNERSHIP GRANT ACT OF 1998

Mr. ALLARD. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (S. 1605) to establish a matching grant program to help States, units of local government, and Indian tribes to purchase armor vests for use by law enforcement officers; to the Committee on the Judiciary.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1605) entitled ''An Act to establish a matching grant program to help States, units of local government, and Indian tribes to purchase armor vests for use by law enforcement officers'', do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Bulletproof Vest Partnership Grant Act of 1998''.

SEC. 2. FINDINGS; PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the number of law enforcement officers who are killed in the line of duty would significantly decrease if every law enforcement officer in the United States had the protection of an armor vest;

(2) according to studies, between 1985 and 1994, 709 law enforcement officers in the United States were feloniously killed in the line of duty;

(3) the Federal Bureau of Investigation estimates that the risk of fatality to law enforcement officers while not wearing an armor vest is 14 times higher than for officers wearing an armor vest;

(4) the Department of Justice estimates that approximately 150,000 State, local, and tribal law enforcement officers, nearly 25 percent, are not issued body armor;

(5) according to studies, between 1985 and 1994, bullet-resistant materials helped save the lives of more than 2,000 law enforcement officers in the United States; and

(6) the Executive Committee for Indian Country Law Enforcement Improvements reports that violent crime in Indian country has risen sharply, despite a decrease in the national crime rate, and has concluded that there is a ''public safety crisis in Indian country''.

(b) PURPOSE.—The purpose of this Act is to save lives of law enforcement officers by helping State, local, and tribal law enforcement agencies provide officers with armor vests.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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SEC. 3. MATCHING GRANT PROGRAM FOR LAW ENFORCEMENT ARMOR VESTS.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended—

(1) by redesignating part Y as part Z;

(2) by redesignating section 2501 as section 2601; and

(3) by inserting after part X the following new part:

"PART Y—MATCHING GRANT PROGRAM FOR LAW ENFORCEMENT ARMOR VESTS

"SEC. 2501. PROGRAM AUTHORIZED.

''(a) IN GENERAL.—The Director of the Bureau of Justice Assistance is authorized to make grants to States, units of local government, and Indian tribes to purchase armor vests for use by State, local, and tribal law enforcement officers.

''(b) USES OF FUNDS.—Grants awarded under this section shall be—

''(1) distributed directly to the State, unit of local government, or Indian tribe; and

''(2) used for the purchase of armor vests for law enforcement officers in the jurisdiction of the grantee.

''(c) PREFERENTIAL CONSIDERATION.—In awarding grants under this part, the Director of the Bureau of Justice Assistance may give preferential consideration, if feasible, to an application from a jurisdiction that—

''(1) has the greatest need for armor vests based on the percentage of law enforcement officers in the department who do not have access to a vest;

''(2) has, or will institute, a mandatory wear policy that requires on-duty law enforcement officers to wear armor vests whenever feasible; and

''(3) has a violent crime rate at or above the national average as determined by the Federal Bureau of Investigation; or

''(4) has not received a block grant under the Local Law Enforcement Block Grant program described under the heading 'Violent Crime Reduction Programs, State and Local Law Enforcement Assistance' of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Public Law 105–119).

''(d) MINIMUM AMOUNT.—Unless all eligible applications submitted by any State or unit of local government within such State for a grant under this section have been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this section not less than 0.50 percent of the total amount appropriated in the fiscal year for grants pursuant to this section, except that the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands shall be each be allocated .25 percent.

''(e) MAXIMUM AMOUNT.—A qualifying State, unit of local government, or Indian tribe may not receive more than 5 percent of the total amount appropriated in each fiscal year for grants under this section, except that a State, together with the grantees within the State may not receive more than 20 percent of the total amount appropriated in each fiscal year for grants under this section.

''(f) MATCHING FUNDS.—The portion of the costs of a program provided by a grant under subsection (a) may not exceed 50 percent. Any funds appropriated by Congress for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the non-Federal share of a matching requirement funded under this subsection.

''(g) ALLOCATION OF FUNDS.—At least half of the funds available under this part shall be awarded to units of local government with fewer than 100,000 residents.

"SEC. 2502. APPLICATIONS.

''(a) IN GENERAL.—To request a grant under this part, the chief executive of a State, unit of local government, or Indian tribe shall submit an application to the Director of the Bureau of Justice Assistance in such form and containing such information as the Director may reasonably require.

''(b) REGULATIONS.—Not later than 90 days after the date of the enactment of this part, the Director of the Bureau of Justice Assistance shall promulgate regulations to implement this section (including the information that must be included and the requirements that the States, units of local government, and Indian tribes must meet) in submitting the applications required under this section.

''(c) ELIGIBILITY.—A unit of local government that receives funding under the Local Law Enforcement Block Grant program (described under the heading 'Violent Crime Reduction Programs, State and Local Law Enforcement Assistance' of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Public Law 105–119)) during a fiscal year in which it submits an application under this part shall not be eligible for a grant under this part unless the chief executive officer of such unit of local government certifies and provides an explanation to the Director that the unit of local government considered or will consider using funding received under the block grant program for any or all of the costs relating to the purchase of armor vests, but did not, or does not expect to use such funds for such purpose.

"SEC. 2503. DEFINITIONS.

''For purposes of this part—

''(1) the term 'armor vest' means body armor, no less than Type I, which has been tested through the voluntary compliance testing program operated by the National Law Enforcement and Corrections Technology Center of the National Institute of Justice (NIJ), and found to meet or exceed the requirements of NIJ Standard 0101.03, or any subsequent revision of such standard;

''(2) the term 'body armor' means any product sold or offered for sale as personal protective body covering intended to protect against gunfire, stabbing, or other physical harm;

''(3) the term 'State' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands;

''(4) the term 'unit of local government' means a county, municipality, town, township, village, parish, borough, or other unit of general government below the State level;

''(5) the term 'Indian tribe' has the same meaning as in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)); and

''(6) the term 'law enforcement officer' means any officer, agent, or employee of a State, unit of local government, or Indian tribe authorized by law or by a government agency to engage in or supervise the prevention, detection, or investigation of any violation of criminal law, or authorized by law to supervise sentenced criminal offenders.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)) is amended by adding at the end the following new paragraph:

''(23) There are authorized to be appropriated to carry out part Y, $25,000,000 for each of fiscal years 1999 through 2001.''.

SEC. 4 SENSE OF THE CONGRESS.

In the case of any equipment or products that may be authorized to be purchased with financial assistance provided using funds appropriated or otherwise made available by this Act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

Amend the title so as to read ''An Act to establish a matching grant program to help State and local jurisdictions purchase armor vests for use by law enforcement departments.''.

Mr. CAMPBELL. Mr. President, on March 11, 1998, the Senate passed S. 1605, the Bulletproof Vest and Partnership Grant Act of 1998 which I introduced along with my colleagues Senators LEAHY and HATCH. On May 12, 1998, with strong bipartisan support, the House passed this bill and with mutually agreed upon modifications. Today, the Senate is about to pass this legislation by a unanimous vote and send it to the President for signature and enactment into law. I wish to thank the distinguished Chairman of the Senate Judiciary Committee, Senator HATCH, and the Committee's ranking member Senator LEAHY, for their help and support with this important legislation.

Two nights ago, on Wednesday, May 13, 1998, in observance of National Police Week, the National Law Enforcement Officers Memorial Fund held the Tenth Annual Memorial Candlelight Vigil and Reception honoring the fallen men and women in the line of duty. My heart goes out to the families and friends of these men and women and I am proud to be a part of a potential solution to this tragedy that faces police officers in the line of duty.

This legislation is endorsed by 38 Attorneys General, the Fraternal Order of Police, the National Sheriffs' Association, the International Union of Police Associations, the Police Executive Research Forum, the International Brotherhood of Police Officers, and the National Associations of Police Organizations. They know this legislation will benefit police and sheriffs' departments around the country.

There are far too many law enforcement officers who patrol our streets and neighborhoods without the proper protective gear against violent criminals.

As a former deputy sheriff, I know first-hand the risks which law enforcement officers face everyday on the front lines protecting our communities.

Today, more than ever, violent criminals have bulletproof vests and deadly weapons at their disposal. In fact, figures from the U.S. Department of Justice indicate that approximately 150,000 law enforcement officers—or 25 percent of the nation's 600,000 state and local officers—do not have access to bulletproof vests. Unfortunately, many police departments just do not have the resources to purchase vests on their own.

The evidence is clear that a bulletproof vest is one of the most important pieces of equipment that any law enforcement officer can have. Since the introduction of modern bulletproof material, the lives of more than 1,500 officers have been saved by bulletproof vests. In fact, the Federal Bureau of Investigation has concluded that officers who do not wear bulletproof vests are

14 times more likely to be killed by a firearm than those officers who do wear vests. Simply put, bulletproof vests save lives.

This Friday afternoon, at the 17th annual National Peace Officers' Memorial Service, the families, friends and colleagues of police officers who have lost their lives in the line of duty this past year will gather on the West Front of the Capitol to remember the courage and sacrifice of their fallen loved ones.

This heartfelt ceremony marks the climax of National Police Week here in Washington, DC. A perfect way to show tribute to these fallen men and women is through passage of the Bulletproof Vest Partnership Grant Act of 1998 by both houses of Congress.

The Bulletproof Vest Partnership Grant Act of 1998 will form a partnership with state and local law enforcement agencies in order to make sure that police officers who need bulletproof vests get one. It will do so by authorizing up to $25 million per year for a new grant program within the U.S. Department of Justice. The program will provide 50–50 matching grants to state and local law enforcement agencies and Indian tribes to assist in purchasing bulletproof vests and body armor. To ensure that the funding goes first to those police departments which need it most, the Director of the Bureau of Justice Assistance is given discretion to give preferential consideration to smaller departments whose budgets are scarce.

Additionally, those jurisdictions which do not receive any funding under the local law enforcement block grant program will be given preference. Furthermore, at least half of the funds available under this program will be awarded to jurisdictions with less than 100,000 residents.

While we know that there is no way to end the risks inherent to a career in law enforcement, we must do everything possible to ensure that officers who put their lives on the line every day also put on a vest. Body armor often means the difference between life and death.

Mr. LEAHY. Mr. President, today we complete the last step to enact the Bulletproof Vest Partnership Grant Act of 1998 that I introduced with Senator HATCH and Senator CAMPBELL last January. Our bipartisan legislation is intended to save the lives of law enforcement officers across the country by helping state and local law enforcement agencies provide their officers with body armor. When we began Senate consideration I urged action by this week, National Police Week. It is appropriate on the day of the Seventeenth Peace Officers' Memorial Service that along with honoring those who made the ultimate sacrifice in the interest of preserving the public safety, we in Congress do all that we can to protect our law enforcement officers.

Far too many police officers are needlessly killed each year while serving to protect our citizens. Just yesterday, the Federal Bureau of Investigation announced that 64 law enforcement officers were slain feloniously in the line of duty in 1997, up from 56 in 1996. And some of these deaths might have been prevented if officers were wearing body armor.

According to the FBI, more than 30 percent of the 1,182 officers killed by a firearm in the line of duty since 1980 could have been saved if they had been wearing body armor. Indeed, the FBI estimates that the risk of fatality to officers while not wearing body armor is 14 times higher than for officers wearing it.

Unfortunately, far too many state and local law enforcement agencies cannot afford to provide every officer in their jurisdictions with the protection of body armor. In fact, the Department of Justice estimates that approximately 150,000 State and local law enforcement officers, nearly 25 percent, are not issued body armor.

A recent incident along the Vermont and New Hampshire border underscores the need for the quick passage of this legislation to provide maximum protection to those who protect us. On August 19, 1997, Federal, State and local law enforcement authorities in Vermont and New Hampshire had cornered Carl Drega, after hours of hot pursuit. This madman had just shot to death two New Hampshire state troopers and two other victims earlier in the day. In a massive exchange of gunfire with the authorities, Drega lost his life.

During that shootout, all federal law enforcement officers wore bulletproof vests, while some state and local officers did not. For example, Federal Border Patrol Officer John Pfeifer, a Vermonter, who was seriously wounded in the incident. If it was not for his bulletproof vest, I would have been attending Officer Pfeifer's wake instead of visiting him, and meeting his wife and young daughter in the hospital a few days later.

The two New Hampshire state troopers who were killed by Carl Drega were not so lucky. They were not wearing bulletproof vests. Protective vests might not have been able to save the lives of those courageous officers because of the high-powered assault weapons used by this madman. But the tragedy underscores the point that all of our law enforcement officers, whether federal, state or local, deserve the protection of a bulletproof vest.

I am relieved that Officer John Pfeifer is doing well and is back on duty. We all grieve for the two New Hampshire officers who were killed. With that and lesser-known incidents as constant reminders, I will continue to do all I can to help prevent loss of life among our law enforcement officers.

The Bulletproof Vest Partnership Grant Act of 1998 will create a new partnership between the federal government and State and local law enforcement agencies to help save the lives of police officers by providing the resources for each and every law enforcement officer to have a bulletproof vest. Our bipartisan bill would create a $25 million matching grant program within the Department of Justice dedicated to helping State and local law enforcement agencies purchase body armor.

Action today would not have been possible without the extraordinary efforts of Congressman VISCLOSKY, Congressman LOBIONDO, and the more than 300 bipartisan cosponsors they assembled for their companion legislation in the House of Representatives. The endorsement and support of many law enforcement organizations including the Fraternal Order of Police, the National Sheriff's Association, the International Union of Police Associations, the Police Executive Research Forum, the International Brotherhood of Police Officers, and the National Association of Police Organizations have all been critical to focusing attention on this important initiative. In my home State of Vermont, the bill enjoys the strong support of Attorney General William Sorrell, the Vermont State Police, the Vermont Police Chiefs Association and many Vermont sheriffs, troopers, game wardens and other local and state law enforcement officials.

Since my time as a State prosecutor, I have always taken a keen interest in law enforcement in Vermont and around the country. Vermont has the reputation of being one of the safest states in which to live, work and visit, and rightly so. In no small part, this is due to the hard work of those who have sworn to serve and protect us. And we should do what we can to protect them, when a need like this one comes to our attention.

Our nation's law enforcement officers put their lives at risk in the line of duty everyday. No one knows when danger will appear. Unfortunately, in today's violent world, even a traffic stop may not necessarily be ''routine.'' Each and every law enforcement officer across the nation deserves the protection of a bulletproof vest.

I am glad that the bill we enact today returns to the Senate bill from the version hastily substituted in a House committee. We include rather than exclude corrections officers. We include rather than exclude Indian tribes. We include a small State minimum to ensure that Vermont and other small States not lose out to their larger neighbors but are enabled to participate to at least a minimum extend in the program. We have been able to achieve quick passage because we have compromised to achieve consensus. Earlier this week, the House of Representatives passed our bill by a vote of 412–4.

I am also glad that we have been able to proceed this week to enact the Care for Police Survivors Act, which I cosponsored with Senators HATCH, BIDEN, DEWINE and SESSIONS as S.1985. This measure will change a ceiling into a

floor for the Public Safety Officers Benefits program. Counseling services will not longer be capped at $150,000 a year.

The unfortunate reality of contemporary life is that we may still lose upwards of 100 law enforcement officers a year nationwide. I wish there were none and I will keep working to improve the assistance and support we provide our law enforcement officers. For those families that sacrifice a loved one in the line of duty I support the additional counseling services that could be made available by the Care for Police Survivors Act.

I hope the House of Representatives will also proceed this week to provide the college education assistance that would be made possible for the families of State and local law enforcement officers killed or disabled in the line of duty by the Public Safety Officers Educational Benefits Assistance Act, S. 1525. I am proud to have cosponsored the Federal Law Enforcement Dependents Assistance Act of 1996 and the pending bill that would extend the educational benefits that we previously provided to the children of federal law enforcement to the families of State and local public safety officials who die or are disabled in the line of duty. Those families make the ultimate sacrifice for our public safety and deserve our support and assistance. I commend Senator SPECTER and Senator BIDEN for their leadership on this effort.

The Senate Judiciary Committee reported this bill to the Senate last Thursday. I said then that I hoped it could be included in a package of legislation passed this week. A fitting tribute to those who gave their lives in preserving our public safety would be for Congress to enact during National Police Week and in anticipation of the annual memorial activities for law enforcement officers the Bulletproof Vest Partnership Act of 1998, S.1605; the Care for Police Survivors Act of 1998, S.1985 (or H.R. 3565 its House counterpart); and the Public Safety Officers Educational Benefits Assistance Act, S.1525. Together these make a significant package of legislation to benefit the families of those who serve in law enforcement.

I am encouraged that we have been able to achieve enactment of two of these three measures and look forward to enactment of the third, that to provide educational opportunities to the families of State and local law enforcement officers, as soon as the House is prepared to proceed.

Mr. THOMPSON. Mr. President, despite the respect that I have for Members who are co-sponsors of this legislation, I must oppose S. 1605.

I do not oppose this legislation because I believe that encouraging local law enforcement officers to be provided body armor is a poor idea. Rather, it is not an appropriate activity of the federal government.

If this new grant program passes, we will once again encourage people in communities all across the country to drive on past city hall, drive on past the state capitol, drive to the airport, fly to Washington and ask the Congress to help them solve a local problem. I believe that local problems can and should be solved by local people. There is hardly any more local issue than the equipment of local law enforcement officers.

Some localities are enlightened and have provided money for body armor. This bill penalizes them. Under this bill, residents of those communities, who have already paid taxed for body armor for their own law enforcement agents, would be taxed to pay for 50 percent of the cost of body armor of law enforcement in communities that have not taxed their citizens to pay for it. Well, as George Bernard Shaw said, ''Any government that robs Peter to pay Paul can always count on the support of Paul.''

The only purpose for which this money can be used by local government is to provide body armor. Communities that have not provided body armor and communities that have not managed to reduce their crime rates receive first preference for the award of the money. That certainly creates an unfortunate incentive. And it means that in the future, localities may forego important law enforcement efforts on the hope that if they wait a bit, taxpayers in other parts of the country will pay 50 percent of the cost.

Under this bill, taxpayer money will be returned to the people who paid it, less the carrying charges and with strings attached. What if the locality or state would like to spend the money on some other purpose than body armor? They are prohibited from doing so. Even if a community that has not provided body armor has a more pressing law enforcement need, they cannot spend the money on anything but body armor. This is an unwarranted intrusion on federalism. Maybe we would help more if we left more tax money to remain in localities in the first place.

This is exactly why the federal government should stay out of this. The era of big government is over I keep hearing, but here is a proposal to make it bigger. And somebody will have to pay for it with money that could have stayed right in the community where it was raised.

If this bill passes, there will be lots of opportunity to pass the buck. Municipalities that do not provide body armor can pass the buck to Washington, saying that the federal government now has the responsibility of doing so. The federal government will point out that most of the funds will have to come from the states and localities. Fingers will point everywhere and accountability will rest nowhere. This is undesirable in a democracy.

Therefore, I record my opposition to this legislation.

Mr. ALLARD. I ask unanimous consent that the Senate agree to the amendments of the House.

The PRESIDENT pro tempore. Without objection, it is so ordered.

CARE FOR POLICE SURVIVORS ACT OF 1998

Mr. ALLARD. Mr. President, I ask unanimous consent that the Senate now proceed to consideration of Calendar 347, H.R. 3565.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will report.

The bill clerk read as follows:

A bill (H.R. 3565) to amend Part L of the Omnibus Crime Control and Safety Streets Act of 1968.

The PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. ALLARD. I ask unanimous consent that the bill be considered read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill appear at this point in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The bill (H.R. 3565) was deemed read the third time and passed.

Mr. BIDEN. Mr. President, I am pleased that the Senate has passed the House companion legislation—H.R. 3565—to S. 1985 the ''Care for Police Survivors Act of 1998'', which I introduced along with Senators HATCH, LEAHY, DEWINE and SESSIONS.

This week we celebrate National Police Week. As we honor those who protect us, it is important that we remember those who have fallen in the line of duty. However, more than mere remembrance is necessary. We must work to ensure that the loved ones these officers leave behind are comforted and assisted in every way. The Care for Police Survivors Act does just that.

This legislation modifies the Public Safety Officers Death Benefit program, which—as my colleagues know—establishes national programs that counsel and assist the families of slain police officers. The purpose of the Care for Police Survivors Act, which the House of Representatives passed overwhelmingly (403–8), is to enhance these national programs. It does so by directing more funds to these programs that counsel and support these families in the aftermath of tragedy. Under current law, these counseling programs have a ceiling of $150,000, this bill changes this to a floor of $150,000.

Mr. President, I have long been concerned about the plight of families of public safety officers killed in the line of duty—last year, Senator SPECTER and I introduced the Public Safety Officers Educational Assistance Act which provides for the education of the spouse and dependent children of law enforcement officers who die or are totally disabled in the line of duty. In that vein, this legislation offers assurance to those in the public safety profession—and even to those considering