

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 337 Workers' Compensation Benefits for Posttraumatic Stress Disorder

SPONSOR(S): McFarland

TIED BILLS: **IDEN./SIM. BILLS:** SB 352

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N	Fletcher	Lloyd
2) Constitutional Rights, Rule of Law & Government Operations Subcommittee			
3) Appropriations Committee			
4) Commerce Committee			

SUMMARY ANALYSIS

Workers' compensation laws require employers to pay medical and indemnity benefits if an employee suffers an accidental injury or death arising out of work performed in the course and scope of their employment. Employer-paid benefits for a nervous or mental injury are typically allowed only if an employee suffers a physical injury that triggers a mental injury.

The Legislature created statutory exceptions for certain first responders in 2018, making Posttraumatic Stress Disorder (PTSD) a compensable occupational disease for firefighters, paramedics, emergency medical technicians, and law enforcement officers who suffer from PTSD after experiencing certain types of qualifying events, even though they were not physically injured.

In 2022, the Legislature extended benefits to correctional officers who experience certain qualifying events and are subsequently diagnosed with PTSD due to their job duties.

The bill extends PTSD benefits to 911 public safety telecommunicators and those crime scene investigators, who are not classified as first responders, that are diagnosed with PTSD after experiencing certain qualifying events, like witnessing a death or grievous bodily injury, or verbally aiding a person who dies during a state of emergency because first responders cannot be dispatched.

The bill has an indeterminate, potentially significant, negative fiscal impact on local governments and an unknown, but likely small, impact on state government.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Diagnosis of Posttraumatic Stress Disorder

According to the American Psychiatric Association, Posttraumatic Stress Disorder (PTSD) is a psychiatric disorder that may occur in people who have experienced or witnessed a traumatic event, such as a natural disaster, serious accident, terrorist act, war, or rape; or people who have been threatened with death, sexual violence, or serious injury.¹ Exposure to an upsetting traumatic event may be indirect rather than first hand. PTSD can occur if a person learns of the violent death of a close family member or friend, or is repeatedly exposed to the horrible details of trauma.²

Symptoms of PTSD may begin shortly after the traumatic event, or may not appear until years after the event. For a person to be diagnosed with PTSD, symptoms must last for more than one month and must cause significant distress or interfere with the individual's daily functioning.³

Symptoms may include flashbacks, nightmares and severe anxiety, as well as uncontrollable thoughts about the event. This can lead to avoidance of any stimuli that recalls the traumatic events, negative thoughts about oneself or the world, and changes in emotional reactions to events, like being easily startled or having trouble sleeping or concentrating.⁴

Rates of PTSD are higher among veterans, police officers, firefighters, and emergency medical personnel.⁵

Florida Workers' Compensation System

Workers' compensation is a no-fault system that provides medical benefits and compensation for lost wages when an employee is injured or killed in the course of employment. Employers must secure coverage, and may do so by purchasing insurance from an authorized carrier, qualifying as a self-insurer, or purchasing coverage from the Florida Workers' Compensation Joint Underwriting Association, which is the state-sponsored insurer of last resort. In return for providing compensation, the employer is relieved of civil tort liability for workplace injuries, and may only be sued for intentional acts that result in injury or death.⁶

In addition to on-the-job injuries, employers may be required to pay compensation or furnish benefits if an occupational disease causes death or disablement.⁷ In general, an occupational

¹ American Psychiatric Association, *What is Posttraumatic Stress Disorder (PTSD)?*, <https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd>, (last visited Mar. 6, 2023).

² *Id.*

³ *Id.*

⁴ Mayo Clinic, *Post-traumatic stress disorder (PTSD)*, <https://www.mayoclinic.org/diseases-conditions/post-traumatic-stress-disorder/symptoms-causes/syc-20355967> (last visited Mar. 6, 2023).

⁵ Institutes of Public Health, *PTSD in First Responders*, <https://institutesofhealth.org/ptsd-in-first-responders> (last visited Mar. 6, 2023).

⁶ Ss. 440.015, 440.09, 440.10, 440.38, and 627.313, F.S.

⁷ S. 440.151(1), F.S.

disease is compensable if:

- A condition peculiar to the occupation causes the disease;
- Epidemiological studies show exposure to a specific substance involved, at the levels to which the employee was exposed, may cause the disease;
- The disease is the result of the *nature of the employment*, meaning the occupation presents a particular hazard of the disease or the incidence of the disease is substantially higher in the occupation than in the public;
- The disease is contracted during the course and scope of employment; and
- The nature of the employment is the *major contributing cause* of the disease, meaning the cause is more than 50% responsible for the disease as compared to all other causes combined, as demonstrated by medical evidence only.⁸

Benefits for Temporary and Permanent Disability

An employer must pay compensation or furnish benefits if an employee suffers a compensable injury or death “arising out of work performed in the course and scope of employment.”⁹

Medical Benefits

Employees are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prostheses, for as long as the nature of the injury and process of recovery requires.¹⁰

Indemnity Benefits

Payments for lost wages, known as indemnity benefits, may be required if an injured employee is unable to work, as determined by an authorized treating medical provider, and typically begin on the eighth day after the employee loses time from work.¹¹ Indemnity benefits fall into four categories:

- **Permanent Total Disability** – In the case of total disability adjudged to be permanent (*i.e.*, the employee is unable to engage in any type of employment), the employer or its insurance carrier must pay two-thirds of the employee’s average weekly wages until the employee reaches the age of 75.¹²
- **Temporary Total Disability** – In the case of disability total in character but temporary in quality, the employer or its insurance carrier must pay two-thirds of the employee’s average weekly wages until the employee returns to work or reaches maximum medical improvement, but in no event more than 260 weeks (five years).¹³
- **Permanent Impairment** – Where an employee has reached maximum medical improvement, is able to return to work, but has a permanent, but partial, physical impairment, the Three-Member Panel¹⁴ establishes and uses an impairment rating schedule which represents a percentage of disability to the body as a whole; a monetary

⁸ Ss. 440.09, and 440.151, F.S.

⁹ S. 440.09(1), F.S.

¹⁰ S. 440.13(2)(a), F.S.

¹¹ Ss. 440.14(1), and 440.20(2)(a), F.S.

¹² S. 440.15(1), F.S.

¹³ S. 440.15(2)(a), F.S., limits disability benefits to 104 weeks (two years), but the Florida Supreme Court held that this limit was unconstitutional and directed that a prior limit of 260 weeks (five years) be reinstated. See *Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. 2016).

¹⁴ S. 440.13, F.S.

- benefit is calculated based on the percentage of impairment.¹⁵
- **Temporary Partial Disability** – Where an employee may work with restrictions, the employer or its insurance carrier must pay 80% of the difference between his or her weekly earnings prior to injury and post-injury. Payments may be required for up to 260 weeks.¹⁶

The minimum payment is \$20 per week and the maximum payment is 100 percent of the statewide average weekly wage, which is based on the average weekly wage paid by employers' subject to the Florida Reemployment Assistance Program Law as reported to the Department of Economic Opportunity.¹⁷ Payments to injured workers who earn more than the statewide average weekly wage are capped at the statewide average weekly wage that was in effect on the date of injury.¹⁸

General Rules of Compensability for Mental or Nervous Injuries

Mental or Nervous injuries may be compensable, but only if the injury is accompanied by a physical injury that requires medical treatment. Thus, if a workplace accident causes both a physical injury and a related mental or nervous injury, both may be compensable so long as the physical injury that requires medical treatment is the major contributing cause (at least 50 percent responsible) of the mental or nervous injury. A mental or nervous injury caused by "stress, fright, or excitement" is not compensable.¹⁹

As discussed above, an employee who is temporarily disabled by a workplace injury is eligible for up to 260 weeks of disability benefits, which typically results in payment of about two-thirds of the employee's regular wages, beginning on the eighth day after the employee loses time from work.²⁰ However, temporary disability benefits caused by a mental or nervous injury are limited to six months after a claimant reaches maximum medical improvement for the physical injury that triggered the mental or nervous injury.²¹

For employees who are not first responders, benefits for mental or nervous injuries: 1) may last no longer than six months from the date of the maximum medical improvement from the physical injury,²² and 2) may not exceed the 1 percent limit on permanent psychiatric impairment benefits.²³

Special Rules for First Responders

The 2007 Law

The Legislature recognized the unique occupational hazards associated with the work of first responders in 2007 by providing additional coverage for employment-related accidents and injuries of both paid and volunteer firefighters, emergency medical technicians and paramedics, and law enforcement officers.²⁴ The law relaxed certain standards to make it easier for first

¹⁵ S 440.15(3), F.S.

¹⁶ S 440.15(4), F.S.

¹⁷ S. 440.12(2), F.S.

¹⁸ *Id.*

¹⁹ S. 440.093, F.S.

²⁰ See *supra* note 13.

²¹ S. 440.093(3), F.S.

²² S. 440.093, F.S.

²³ Ss. 440.14(3), and 440.15(3)(c), F.S.

²⁴ Chapter 2007-87, Laws of Florida, created s. 112.1815, F.S.

responders to obtain workers' compensation benefits.

For mental and nervous injuries, lawmakers:

- Authorized medical benefits for first responders who did not suffer a physical injury but demonstrate, by clear and convincing evidence, that a mental or nervous injury arose out of employment;
- Authorized indemnity benefits (lost wages) for first responders who demonstrate that a mental or nervous injury arose out of a physical injury suffered during the course of employment; and
- Exempted first responders from limits that typically apply to temporary disability benefits for mental and nervous injuries.

For occupational diseases, lawmakers:

- Reduced the evidentiary burden for claims of occupational disease due to exposure to a specific toxic substance, requiring proof of causation by a preponderance of the evidence, rather than the clear and convincing evidentiary standard typically applied to such claims; and
- Eliminated the requirement that a first responder's claim of occupational disease be supported by epidemiological studies showing that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee.

Additionally, lawmakers:

- Created a presumption that any adverse reaction to a smallpox vaccination administered to a first responder is a compensable accident; and
- Required that permanent total supplemental benefits received by a first responder whose employer does not participate in the Social Security program shall not terminate when the first responder reaches age 62.

2018 Amendments

In 2018, the Legislature authorized medical benefits and compensation for lost wages for first responders who are diagnosed with PTSD (as described by the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association).²⁵

As a result, a first responder who experiences one of the following qualifying events need not suffer a physical injury to qualify for medical benefits and be compensated for lost wages:

- Seeing a deceased minor;
- Witnessing the death of a minor;
- Witnessing an injury to a minor who subsequently dies before or upon arrival at a hospital emergency department;
- Participating in the treatment of an injured minor who dies before or on arrival at a hospital emergency department;
- Transporting an injured minor who dies before or on arrival at a hospital emergency department;
- Seeing a decedent whose death was due to grievous bodily harm of a nature that shocks the conscience;
- Witnessing a death (including suicide) that involved grievous bodily harm of a nature that

²⁵ Chapter 2018-124, Laws of Florida, amended s. 112.1815, F.S.
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shocks the conscience;

- Witnessing a homicide, whether criminal or excusable, including murder, mass killing, manslaughter, self-defense, misadventure, and negligence;
- Witnessing an injury (including an attempted suicide) to a person who dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
- Participating in the treatment of an injury (including attempted suicide) to a person who dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience; or
- Transporting a person who was injured (including by attempted suicide) who dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.

2022 Amendments

In 2022, the Legislature authorized medical benefits and compensation for lost wages for correctional officers who are diagnosed with PTSD. As a result, a correctional officer who experiences one of the following qualifying events need not suffer a physical injury to qualify for medical benefits and be compensated for lost wages:

- Being taken hostage by an inmate or trapped in a life-threatening situation as a result of an inmate's act;
- Directly witnessing a death (including a death due to suicide) of a person who suffered grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing an injury (including an attempted suicide) to a person who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
- Participating in the physical treatment of an injury, or manually transporting a person who was injured (including by attempted suicide) who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing (three or more killings in a single incident), manslaughter, self-defense, misadventure, and negligence; or
- Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience.²⁶

Eligibility of First Responders and Correctional Officers for PTSD Benefits

To be eligible for workers' compensation benefits for PTSD, the above-mentioned first responders and correctional officers must demonstrate that they were acting within the scope of employment when they experienced a qualifying event,²⁷ that they were diagnosed with PTSD by the employer or carrier's authorized treating physician,²⁸ and that they reported the injury to their employer within 90 days of a qualifying event or the manifestation of PTSD, whichever is later.²⁹ If the employer or carrier denies benefits, the employee must file a claim for benefits within one year

²⁶ S. 112.18155, F.S.

²⁷ Ss. 112.1815(5) and 112.18155(2)(a)1, F.S.

²⁸ Ss. 112.1815(5)(a)2 and 112.18155(2)(b), F.S.

²⁹ Ss. 112.1815(5)(d) and 112.18155(5), F.S.

after the qualifying event or diagnosis of PTSD, whichever is later.³⁰

Employing agencies are required to provide training related to mental health awareness, prevention, mitigation, and treatment.³¹

The Division of Workers' Compensation within the Department of Financial Services (DFS) adopted Rule 69L-3.009, F.A.C., to specify the types of injuries that qualify as grievous bodily harm of a nature that shocks the conscience. This rule is used to administer s. 112.1815, F.S., relating to specified first responders (for firefighters, paramedics, emergency medical technicians, and law enforcement officers). DFS has proposed a new rule to administer s. 112.1855, F.A.C., relating to correctional officers.

Currently, 911 public safety telecommunicators and civilian crime scene investigators are not eligible to receive workers' compensation benefits for PTSD under s. 112.1815, F.S.

Effect of the Bill

The bill makes 911 public safety telecommunicators and crime scene investigators eligible for workers' compensation benefits for PTSD, even if the employee has not suffered a physical injury, so long as the employee is diagnosed with PTSD by the employer or insurance carrier's authorized physician and the PTSD was caused by the employee experiencing one of the following qualifying events:

- Directly witnessing a death, including a death due to suicide, that involved grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing the death of a minor;
- Directly witnessing an injury, including an attempted suicide, to a person who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing an injury to a minor who subsequently dies before or upon arrival at a hospital emergency department;
- Verbally aiding a person seeking public safety assistance in the physical treatment of a minor who subsequently dies before or upon arrival at a hospital emergency department;
- Verbally aiding a person seeking public safety assistance in the physical treatment of a person who subsequently dies during a state of emergency declared by the Governor and the person's death occurs because first responders cannot be dispatched;
- Verbally aiding a person seeking public safety assistance in the physical treatment of an injury, including by attempted suicide, to a person who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing, manslaughter, self-defense, misadventure, and negligence;
- Seeing for oneself a deceased minor;
- Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that

³⁰ *Id.*

³¹ Ss. 112.1815(6) and 112.18155(6), F.S.

- shocks the conscience; or
- Seeing for oneself a decedent who is in an advanced stage of decomposition.

PTSD must be demonstrated by clear and convincing medical evidence.

The time for notice of injury is identical to the notice provision for first responders and correctional officers. Thus, 911 public safety telecommunicators or crime scene investigators may be eligible for benefits for PTSD, without suffering a physical injury, only if they report an injury within 90 days of a qualifying event or the manifestation of PTSD, whichever is later. If an employer or insurance carrier denies benefits, the employee must file a claim within one year after the qualifying event or diagnosis of PTSD, whichever is later.

Agencies that employ 911 public safety telecommunicators and crime scene investigators must provide training related to mental health awareness, prevention, mitigation, and treatment.

DFS must adopt a rule to specify the types of injuries an employee may witness that qualify as grievous bodily harm of a nature that shocks the conscience.

Existing law makes about 137,926 first responders eligible for workers' compensation benefits for PTSD; this includes 48,211 law enforcement officers,³² 20,420 firefighters,³³ 35,543 emergency medical technicians,³⁴ and 33,752 paramedics.³⁵ About 28,929 correctional officers working for state, county, and private correctional agencies are covered as well.³⁶

The bill extends benefits to about 198 licensed 911 public safety telecommunicators.³⁷

The bill also extends benefits to an undetermined number of crime scene investigators; some may be sworn officers while some may be civilian employees of law enforcement agencies. Rosters maintained by the International Association for Identification, based in Hollywood, Florida, show 216 certified crime scene investigators in Florida.³⁸ The U.S. Bureau of Labor Statistics identifies 1,760 people working as forensic science technicians.³⁹

B. SECTION DIRECTORY:

Section 1. Creates s. 112.18156, F.S., relating to 911 public safety telecommunicators and crime

³² Florida Department of Law Enforcement, *2021 Criminal Justice Agency Profile Report*, <https://www.fdle.state.fl.us/CJSTC/Publications/CJAP/CJAP.aspx> (last visited Mar. 6, 2023) (reports 4241 officers working for state agencies; 22,322 law enforcement officers working for sheriff's offices; 1,870 working for schools, universities, and ports; and 19,778 working for municipal police departments).

³³ U.S. Bureau of Labor Statistics, *Occupational Employment and Wages, May 2021*, <https://www.bls.gov/oes/current/oes332011.htm> (last visited Mar. 6, 2023).

³⁴ Department of Health, License Verification, *Emergency Medical Technician*, <https://mqa-internet.doh.state.fl.us/MQASearchServices/HealthCareProviders> (last visited Mar. 6, 2023).

³⁵ Department of Health, License Verification, *Paramedic*, <https://mqa-internet.doh.state.fl.us/MQASearchServices/HealthCareProviders> (last visited Mar. 6, 2023).

³⁶ See *supra* note 31.

³⁷ Department of Health, License Verification, *911 public safety telecommunicator*, <https://mqa-internet.doh.state.fl.us/MQASearchServices/HealthCareProviders> (last visited Mar. 6, 2023).

³⁸ The Independent Association for Identification, *Crime Scene Certification*, https://www.theiai.org/crime_scene.php (last visited Mar. 6, 2023) (rosters identify 51 crime scene investigators, 113 crime scene analysts, and 52 senior crime scene analysts).

³⁹ See *supra* note 32.

scene investigators; special provisions for posttraumatic stress disorders.

Section 2. Declares that the bill fulfills an important state interest.

Section 3. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The majority of 911 public safety telecommunicators and crime scene investigators are municipal employees, rather than state employees, and are therefore not covered by the Risk Management Trust Fund (RMTF) for workers' compensation coverage.⁴⁰ However, the 12 state universities, Florida Department of Law Enforcement (FDLE), Florida Fish and Wildlife Conservation Commission (FWC), and Florida Department of Highway Safety and Motor Vehicles (FDHSMV) have dispatch units with 911 public safety telecommunicators and crime scene investigators.⁴¹ While approximately 400-500 911 public safety telecommunicators are covered by the RMTF, the number of crime scene investigators are estimated to be low, as some crime scene investigators are law enforcement officers already covered under the current statute.⁴² Accordingly, the RMTF may experience an unknown, but likely small, increase in workers' compensation claims as a result of the extension of PTSD benefits to 911 public safety telecommunicators and crime scene investigators.⁴³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Municipalities, counties, and special districts likely would be required to pay more workers' compensation claims due to extension of PTSD benefits to 911 public safety telecommunicators and crime scene investigators.⁴⁴

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Physicians who are authorized providers could experience an increase in patients and insurance carriers could experience an increase in claims.

D. FISCAL COMMENTS:

The bill has an indeterminate, likely significant, negative fiscal impact on state and local

⁴⁰ Florida Department of Financial Services, Agency Analysis of 2023 House Bill 337, p. 1 (Mar. 6, 2023).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at p. 3.

⁴⁴ *Id.* at p. 2.

governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill extends workers' compensation benefits for PTSD to 911 public safety telecommunicators and crime scene investigators; however, an exemption may apply because all similarly situated state and local government employers of 911 public safety telecommunicators and crime scene investigators are required to provide workers' compensation benefits.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides sufficient rulemaking authority to the Department of Financial Services, Division of Workers' Compensation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES