

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

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BILL: CS/SB 664

INTRODUCER: Banking and Insurance Committee and Senator Bradley and others

SUBJECT: Posttraumatic Stress Disorder Workers' Compensation for Law Enforcement and Correctional Officers

DATE: February 21, 2022      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 664 revises the current definition of first responders, for purposes of workers' compensation coverage for posttraumatic stress disorder (PTSD) benefits, to include part-time law enforcement officers and auxiliary law enforcement officers.

Further, the bill provides workers' compensation indemnity benefits in specified circumstances for PTSD suffered by a correctional officer regardless of whether the individual's PTSD is accompanied by a physical injury requiring medical treatment. The bill provides PTSD is a compensable occupational disease for a correctional officer (CO) if the PTSD resulted from a CO acting within the course and scope of employment. Additionally, an authorized treating psychiatrist must examine and diagnose the CO as having PTSD due to experiencing at least one of the delineated qualifying events.

The bill has an indeterminate, yet negative impact on state revenues and expenses. The Department of Financial Services (DFS) Division of Risk Management estimates the State Risk Management Trust Fund could potentially pay as much as \$8.4 million to \$16.8 million over the first three years of the bill becoming law; the DFS expects this amount would grow exponentially over time. The DFS anticipates an additional Workers' Compensation Specialist may be needed at a recurring cost of \$70,991 and non-recurring costs of \$4,591.

The bill would have an indeterminate negative fiscal impact on local governments as workers' compensation claims could increase.

The bill has an effective date of July 1, 2022.

## II. Present Situation:

### Posttraumatic Stress Disorder (PTSD)

The American Psychiatric Association (APA) provides diagnostic criteria for mental disorders, including posttraumatic stress disorder (PTSD), in its *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5). PTSD is a psychiatric disorder that can occur in people who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, a terrorist act, war, combat, rape, or who have been threatened with death, sexual violence or serious injury.<sup>1</sup>

#### *Diagnosis*

A diagnosis of PTSD requires exposure to an upsetting traumatic event.<sup>2</sup> Symptoms fall into four categories: intrusion, avoidance, alterations in cognition and mood, and alterations in arousal and reactivity.<sup>3</sup> In order to diagnose a person with PTSD, symptoms must last for more than a month and must cause significant distress or problems in the individual's daily functioning.<sup>4</sup>

#### *Prevalence Rates*

The exact prevalence rate for PTSD is difficult to ascertain. About 15 million adults will have PTSD during a given year.<sup>5</sup> About eight percent of females develop PTSD during their lives compared with about four percent of males.<sup>6</sup> Approximately six to seven percent of the adult population in the United States will have PTSD at some point during their lifetime.<sup>7</sup> Among the U.S. military veteran population, the prevalence variance in studies has ranged from approximately 30 percent of the Vietnam era veterans to more recently 13 percent to 14 percent of veterans serving in the dual wars in Iraq and Afghanistan over the last 20 years.<sup>8</sup>

Although estimates vary across occupations and the general population, some studies indicate first responders and other professionals who are exposed to potentially traumatic events in their workplace are more likely to develop PTSD compared to the general population.<sup>9</sup> An estimated 30 percent of first responders develop behavioral health conditions, including depression and

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<sup>1</sup> See American Psychiatric Association, *What is Posttraumatic Stress Disorder?* <https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd> (Aug. 2020) (last visited Feb. 17, 2022).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> U.S. Department of Veterans Affairs, National Center for PTSD, *How Common is PTSD in Adults?* [https://www.ptsd.va.gov/understand/common/common\\_adults.asp](https://www.ptsd.va.gov/understand/common/common_adults.asp) (last visited Feb. 17, 2022).

<sup>6</sup> *Id.*

<sup>7</sup> *Mo Med.* 2021 Nov-Dec.; 118(6): 546–551.

<sup>8</sup> *Id.*

<sup>9</sup> *Psychological Trauma: Theory, Practice, and Policy* 2015, Vol. 7, No. 5, 500-506.

PTSD, as compared with 20 percent of the general population.<sup>10</sup> A 2015 survey of 4,000 first responders found that 6.6 percent had attempted suicide, which is more than 10 times the rate in the general population.<sup>11</sup> Military veterans deployed from 2001 to 2007 had a 41 percent higher suicide risk than the general population, according to the Department of Veterans Affairs.<sup>12</sup>

A study<sup>13</sup> of the prevalence rates of PTSD among U.S. correction professionals included the following findings:

- The prevalence rate for symptoms of PTSD experienced within the past 30 days was 27 percent for the entire sample, and 31 percent and 22 percent for males and females, respectively;
- A higher rate of PTSD, 31 percent, was found among security personnel compared to all other types of personnel; and
- One hundred percent of participants confirmed exposure to at least one VID (violence, injury, death) event during their career, with 28 VID events being the average number experienced by participants during their career.

In reference to the entire sample of correction professionals analyzed, PTSD-positive participants reported significantly:

- More exposure to workplace VID and negative VID-related emotions,
- Higher levels of depression, anxiety, and stress,
- More absenteeism, health services utilization, health conditions, and substance use, and
- Lower levels of pro-health behaviors, life functioning, and life satisfaction.<sup>14</sup>

### **Florida Workers' Compensation System**

Employers are required to pay compensation or furnish benefits that are required under ch. 440, F.S., if an employee suffers an accidental compensable injury or death arising out of work performed in the course and the scope of the employment.<sup>15</sup> Generally, employers may

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<sup>10</sup> Substance Abuse and Mental Health Services Administration, *First Responders: Behavioral Health Concerns, Emergency Response, and Trauma* (May 2018) <https://www.samhsa.gov/sites/default/files/dtac/supplementalresearchbulletin-firstresponders-may2018.pdf> (last visited Feb. 17, 2022). The term, “first responders,” includes emergency medical services, firefighters, and police officers.

<sup>11</sup> FireRescue1, *Increasing suicide rates among first responders spark concern*, <https://www.firerescue1.com/fire-ems/articles/increasing-suicide-rates-among-first-responders-spark-concern-TkuBikGnO3vPHIb3/> (last visited Feb. 17, 2022).

<sup>12</sup> U.S. Department of Justice, Health Care, Public Health, *Suicide Risk and Risk of Death Among Recent Veterans*, <https://www.publichealth.va.gov/epidemiology/studies/suicide-risk-death-risk-recent-veterans.asp> (last visited Feb. 17, 2022), citing Kang HK, Bullman TA, Smolenski DJ, Skopp NA, Gahm GA, Reger MA. *Suicide risk among 1.3 million veterans who were on active duty during the Iraq and Afghanistan wars*. *Ann Epidemiol*. 2015 Feb;25(2):96-100. doi: 10.1016/j.annepidem.2014.11.020. Epub 2014 Nov 28. PMID: 25533155.

<sup>13</sup> U.S. Department of Justice, Office of Justice Programs, Spinaris, Caterina, *et. al. Posttraumatic Stress Disorder in United States Corrections Professionals: Prevalence and Impact on Health and Functioning* (2012), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/posttraumatic-stress-disorder-united-states-corrections> (last visited Feb. 17, 2022).

<sup>14</sup> *Id.*

<sup>15</sup> Section 440.09(1), F.S.

secure coverage from an authorized carrier, qualify as a self-insurer,<sup>16</sup> or purchase coverage from the Workers' Compensation Joint Underwriting Association, the insurer of last resort.<sup>17</sup>

Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.<sup>18</sup> An accidental compensable injury must be the major contributing cause of any resulting injury, meaning the cause must be more than 50 percent responsible for the injury as compared to all other causes combined, as demonstrated by medical evidence only.<sup>19</sup> An injury or disease caused by a toxic substance is not an injury by accident arising out of employment unless there is clear and convincing evidence establishing exposure to the specific substance caused the injury or diseases sustained by the employee.<sup>20</sup> Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.<sup>21</sup>

Indemnity benefits only become payable to employees who are disabled for at least eight days due to a compensable workplace injury.<sup>22</sup> These benefits are generally payable at 66 2/3 percent of the employee's average weekly wage,<sup>23</sup> up to the maximum weekly benefit established by law.<sup>24</sup> Indemnity benefits fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, and permanent total disability, as described below:

- Temporary partial disability and temporary total disability benefits are payable for up to a combined total of 260 weeks;<sup>25</sup>
- Permanent partial disability benefits are payable as impairment income benefits that are provided for a variable number of weeks depending upon the value of the injured worker's permanent impairment rating pursuant to a statutory formula;<sup>26</sup> and
- Permanent total disability benefits are payable until the age of 75, unless the work-related accident occurs after the worker's 70<sup>th</sup> birthday, then the benefit is paid for five years.<sup>27</sup>

Section 440.15(3), F.S., provides permanent impairment benefits are limited for a permanent psychiatric impairment to one percent permanent impairment.

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<sup>16</sup> Section 440.38, F.S.

<sup>17</sup> Section 627.311(5)(a), F.S.

<sup>18</sup> "Compensable" means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment. Section 440.13(1)(d), F.S.

<sup>19</sup> Section 440.09(1), F.S.

<sup>20</sup> Section 440.02(1), F.S.

<sup>21</sup> Section 440.13(2)(a), F.S.

<sup>22</sup> Section 440.12(1), F.S.

<sup>23</sup> An injured workers' average weekly wage is an amount equal to one-thirteenth of the total amount of wages earned during the 13 weeks immediately preceding the compensable accident pursuant to s. 440.14(1), F.S.

<sup>24</sup> Section 440.15(1)-(4), F.S.

<sup>25</sup> Section 440.15(2) and (4), F.S. Section 440.15(2)(a), F.S., specify that temporary total disability benefits are payable for 104 weeks; however, the Florida Supreme Court has found this provision unconstitutional and revived the standard of 260 weeks of payable temporary total disability benefits. *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. Jun. 9, 2016). Section 440.15(4)(e), F.S., provides that temporary partial disability benefits; however, the 1st DCA applied the holding in *Westphal* to these benefits finding the limitation unconstitutional and reverted the limitation to the 260 weeks previously allowed. *Jones v. Food Lion, Inc.*, No. 1D15-3488, 2016 Fla. App. LEXIS 16710 (Fla. 1st DCA Nov. 9, 2016).

<sup>26</sup> Section 440.15(3), F.S.

<sup>27</sup> Section 440.15(1), F.S.

### ***General Compensability for Mental or Nervous Injuries***

Section 440.093, F.S., sets forth the conditions under which a mental or nervous injury is compensable. A mental or nervous injury due to only stress, fright, or excitement is not an injury by accident arising out of the employment. Mental or nervous injuries without an accompanying physical injury requiring medical treatment are not compensable. In addition, a physical injury resulting from a mental or nervous injury unaccompanied by a physical trauma requiring medical treatment is not compensable.

Further, s. 440.093, F.S., provides that mental or nervous injuries occurring as a manifestation of an injury compensable under ch. 440, F.S., must be demonstrated by clear and convincing medical evidence. The compensable physical injury must be the major contributing cause of the mental or nervous injury. The law also limits the duration of temporary benefits for a compensable mental or nervous injury to no more than six months after the employee reaches maximum medical improvement.

### ***Current PTSD Statutory Benefits for First Responders***

In 2018, the Legislature revised the standards for determining compensability of PTSD as an occupational disease under workers' compensation coverage for first responders.<sup>28</sup> As a result, first responders who meet certain conditions may access indemnity and medical benefits for PTSD without an accompanying physical injury. A "first responder" is a law enforcement officer, as defined in s. 943.10, F.S.,<sup>29</sup> a firefighter as defined in s. 633.102, F.S.,<sup>30</sup> or an emergency medical technician or paramedic as defined in s. 401.23, F.S.,<sup>31</sup> employed by state or local government. Further, a volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged by the state or a local government is considered a first responder of the state or local government.<sup>32</sup>

Section 112.1815, F.S., provides workers' compensation indemnity benefits in specified circumstances for PTSD suffered by a law enforcement officer, a firefighter, an emergency medical technician, or a paramedic regardless of whether the individual's PTSD is accompanied by a physical injury requiring medical treatment. If the first responder:

- Has PTSD that resulted from the course and scope of employment; and

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<sup>28</sup> Ch. 2018-124, Laws of Fla.

<sup>29</sup> "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

<sup>30</sup> "Firefighter" means an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services pursuant to s. 633.408, F.S.

<sup>31</sup> "Emergency medical technician" means a person who is certified by the Department of Health to perform basic life support pursuant to pt. III of ch. 401, F.S. "Paramedic" means a person who is certified by the Department of Health to perform basic and advanced life support pursuant to pt. III of ch. 401, F.S.

<sup>32</sup> Section 112.1815, F.S.

- Is examined and diagnosed with PTSD by an authorized treating psychiatrist of the employer or carrier due to the first responder experiencing one of the following qualifying events relating to minors or others:
  - Seeing for oneself a deceased minor;
  - Witnessing directly the death of a minor;
  - Witnessing directly the injury to a minor who subsequently died prior to, or upon arrival at a hospital emergency department,
  - Participating in the physical treatment of, or manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department;
  - Seeing for oneself a decedent who died due to grievous bodily harm of a nature that shocks the conscience;
  - Witnessing directly a death, including suicide, due to grievous bodily harm; or homicide, including murder, mass killings, manslaughter, self-defense, misadventure, and negligence;
  - Witnessing directly an injury that results in death, if the person suffered grievous bodily harm that shocks the conscience; or
  - Participating in the physical treatment of an injury, including attempted suicide, or manually transporting an injured person who suffered grievous bodily harm, if the injured person subsequently died prior to or upon arrival at a hospital emergency department.

Further, the PTSD must be demonstrated by clear and convincing evidence. Medical and indemnity benefits for a first responder's PTSD are due regardless of whether the first responder incurred a physical injury, and the following provisions do not apply:

- Apportionment due to a preexisting PTSD;
- The one percent limitation on permanent psychiatric impairment benefits; or
- Any limitation on temporary benefits under s. 440.093, F.S.

The first responder must file the notice of injury with their employer or carrier within 90 days of the qualifying event, described above, or manifestation of the PTSD, whichever is later. However, the claim is barred if it is not filed within 52 weeks of the qualifying event.

Current law requires an employing agency of a first responder to provide educational training relating to mental health awareness, prevention, mitigation, and treatment.

In 2019, the Department of Financial Services (DFS) adopted Rule 69L-3.009, F.A.C., that specifies the types of injuries which qualify as grievous bodily harm of a nature that shocks the conscience, pursuant to s. 112.1815(5), F.S.

### **The Department of Financial Services/Division of Risk Management**

The Division of Risk Management (division) of the DFS is responsible for the management of claims reported by or against state agencies and universities for coverage under the self-insurance fund, known as the State Risk Management Trust Fund. Coverages provided through the trust fund include workers' compensation, property, fleet automobile liability, general liability, federal civil rights and employment discrimination, and court awarded attorney fees.<sup>33</sup>

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<sup>33</sup> Section 284.30, F.S.

The division also provides loss prevention services and technical assistance to state agencies and universities for managing risk.<sup>34</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 112.1815, F.S., to provide the term, “first responder,” includes part-time law enforcement officers as defined in s. 943.10(6), F.S., and auxiliary law enforcement officers as defined in s. 943.10(8), F.S. This would extend medical and indemnity benefits for posttraumatic stress disorder (PTSD) for such officers if they meet other current requirements of this section. Agencies employing such officers are required to provide educational training related to mental health awareness, prevention, mitigation, and treatment. The section provides a technical conforming change.

**Section 2** creates s. 112.18155, F.S., to provide PTSD is a compensable occupational disease for a part-time or full-time correctional officer (CO) if the PTSD resulted from the officer acting within the course and scope of his or her employment; and is examined and diagnosed with PTSD by an authorized treating psychiatrist of the employer or carrier and has PTSD due to experiencing one of the specified qualifying events. For a CO, the qualifying events are:

- Being seriously injured by an inmate in a manner that shocks the conscience;
- Being taken hostage by an inmate or trapped in a life-threatening situation as a result of an inmate’s act;
- Directly witnessing an injury, including an injury caused by a suicide attempt, to a person who subsequently died 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, including an injury caused by an attempted suicide, to a person who subsequently died 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;
- Manually transporting a person who was injured, including by a suicide attempt, and 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 death, including a death by suicide, that involved 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; or
- Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience.

The PTSD diagnosis must be proved by clear and convincing evidence. The PTSD benefits do not require a physical injury to the CO to be compensable. The following provisions do not apply:

- Apportionment due to a preexisting PTSD;
- The one percent limitation on permanent psychiatric impairment benefits; or

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<sup>34</sup> Department of Financial Services, The Division of Risk Management, *About the Division*, <https://myfloridacfo.com/Division/Risk/> (last visited Feb. 17, 2022).

- Any limitation on temporary benefits under s. 440.093, F.S.

The bill provides the time for notice of injury or death is the same as s. 440.151(6), F.S., and is measured from one of the qualifying events or the manifestation of the disorder, whichever is later. A claim must be noticed properly within 52 weeks after the qualifying event.

An employing agency of a correctional officer is required to provide educational training relating to mental health awareness, prevention, mitigation, and treatment.

The Department of Financial Services (DFS) must adopt rules specifying injuries qualifying as grievous bodily harm of a nature that shocks the conscience for the purposes of this section.

**Sections 3, 4, and 5** amend ss. 111.09, 119.071, and 627.659, F.S., respectively, to provide conforming cross references.

**Section 6** provides the Legislature determines and declares this act fulfills an important state interest.

**Section 7** provides the bill takes effect July 1, 2022.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Article VII, s. 18(a) of the State Constitution provides, in relevant part, that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and the law requiring such expenditure is approved by two-thirds of the membership in each house of the Legislature; [or]...the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments...” The provisions of this bill appear to apply to all persons similarly situated (state agencies, state universities, state colleges, and local governments employing law enforcement officers, correctional officers, and correctional probation officers).

**Section 6** of the bill contains a finding that the Legislature determines and declares the bill fulfills an important state interest.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.



## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

The expansion of the definition of the term, “first responder,” to include part-time law enforcement officers, and auxiliary law enforcement officers will allow those officers to be eligible for medical and indemnity benefits for posttraumatic stress disorder (PTSD) without having an accompanying physical injury if they meet certain conditions. Further, part-time and full-time correctional officers would be eligible for indemnity and medical benefits for PTSD without having an accompanying physical injury if they meet certain conditions.

Privately managed prisons would be impacted with increased workers’ compensation costs similar to that of the State Risk Management Trust Fund.<sup>35</sup>

## C. Government Sector Impact:

The bill has an indeterminate, yet negative, impact on state revenues and expenditures.

**Department of Corrections<sup>36</sup>**

The Department of Corrections (DOC) employs about 14,500 correctional officers (COs) and correctional probation officers (CPOs) and has approximately 20,500 overall positions with potential eligibility for benefits under the provisions of this bill.<sup>37</sup>

Recognizing that only a portion of officers are exposed to a qualifying event or circumstance each year, the DOC has provided data which may impact filing of PTSD claims. The DOC reports:

- In Fiscal Year 2020-2021, 1,036 officers were identified as having been injured by inmates. Under this bill, cases involving physical injury from the apportionment provisions in s. 440.093 F.S., would be eliminated as it relates to mental injuries;

<sup>35</sup> Department of Financial Services, *2022 Legislative Analysis of SB 664* (Dec. 3, 2021) (on file with the Senate Committee on Banking and Insurance).

<sup>36</sup> Department of Corrections, *2022 Agency Legislative Analysis of SB 664* (Dec. 2, 2021) (on file with the Senate Banking and Insurance Committee).

<sup>37</sup> *Id.*

- In 2021, one employee was taken hostage by an inmate. The DOC has not identified any other occurrences in the previous three calendar years;
- Approximately 300 COs or CPOs are exposed each year to a death that could meet the parameters outlined in the provisions of the bill. The DOC does not track deaths with specificity as to those where the death would qualify as to one that “shocks the conscience.”<sup>38</sup>

The DOC currently provides some mental health curriculum; however most training relates to inmates and not staff. Under the bill, the DOC would be required to provide and track training for staff. The DOC indicates curriculum changes might be developed within existing resources and staff. However, the DOC estimates there would be increased cost associated with the expansion of PTSD coverage and eligibility.<sup>39</sup> In addition, the DOC would need to change procedures as it relates to evaluating compensable disorders under Florida’s Workers’ Compensation law as it relates to correctional officers.

#### **Department of Financial Services (DFS)/Division of Risk Management<sup>40</sup>**

The DFS notes it is difficult to estimate the number of new workers’ compensation claims that would be filed as a result of enactment of the bill; but the DFS expects the fiscal impact would be significant. Prevalence rates for correctional professions vary amongst the studies e.g., 19 percent to 34 percent<sup>41</sup> and 27 percent to 31 percent.<sup>42</sup> Based upon the increased number of employees to be covered by this bill and the estimated number of correctional officers that are exposed to a qualifying event annually, the bill would likely have a significant impact on the State Risk Management Trust Fund (SRMTF) for claims expenditures and staffing.

In the Non-operating Loss Payment Category, based on an assumption of 200 new PTSD claims per year, the DFS estimated the SRMTF could potentially pay as much as \$8.4 million to \$16.8 million over the first three years after the enactment of the bill. The DFS expects this amount would grow exponentially over time.

The bill would add approximately 18,738<sup>43</sup> additional full time employees (FTEs) who would be eligible for workers’ compensation PTSD benefits.

The addition of the auxiliary and part-time officers eligible for PTSD benefits is expected to be minimal due to the relatively limited exposure for the additional officers. The primary impact of this bill is the medical and indemnity coverage for correctional officers

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<sup>38</sup> *Id.* Citing a three year average, the DOC reported there were 1,500 fights or batteries which occurred in prisons within its purview with 2,000 correctional officers identified as annually responding to incidents. The DOC addresses additional impacts for each qualifying event or circumstance in its analysis of SB 664, as originally filed.

<sup>39</sup> *Id.*

<sup>40</sup> *See supra* note 35.

<sup>41</sup> *Id.*

<sup>42</sup> *See supra* note 13.

<sup>43</sup> *See supra* note 35 at 1. This number includes approximately 18,500 correctional officers and 238 part-time and auxiliary law enforcement officers.

diagnosed with PTSD who experience a qualifying event. Correctional officers witness suicides and deaths in prisons, and some officers that work in the system for a long period of time are more likely to experience multiple incidents. Therefore, it is likely that the number of claims filed and costs due to PTSD for this sector of employees would increase substantially, and could occur at a higher rate than what has been seen since the 2018 law was enacted.

Based on information provided by the DOC, approximately 300 officers are exposed to a death which meets one of the qualifying events of the bill and 1,036 officers are injured by inmates each year.<sup>44</sup> This provides an estimated 1,336 officers who could potentially file a claim for PTSD. It is unknown how many of those officers exposed to a qualifying event would develop PTSD and subsequently file a workers' compensation claim. The DFS estimated a 15 percent annual rate of actual PTSD claims being filed, which may underestimate or overestimate the actual number of claims filed.<sup>45</sup> The DFS notes the bill defines one of the qualifying events as a correctional officer being "seriously injured" by an inmate that shocks the conscience. However, it is unknown what would qualify as a serious injury. For that reason, the DFS assumed that all 1,036 injured officers could be considered seriously injured.<sup>46</sup>

The DFS estimates the need for one full time equivalent Workers' Compensation Specialist at a recurring cost of \$70,991 and non-recurring costs of \$4,591.<sup>47</sup>

### **Department of Management Services/Division of Retirement**

The Department of Management Services, Division of Retirement (division) has indicated the bill has an indeterminate, yet significant, impact on state funds. Redefining the definition of first responders to include part-time and auxiliary law enforcement officers, and part-time and auxiliary correctional officers, for purposes of workers' compensation benefits, may affect the Florida Retirement System (FRS). The division has indicated an actuarial study will need to be completed to determine costs and whether or not there is an unfunded liability to the FRS.<sup>48</sup>

## **VI. Technical Deficiencies:**

While the committee substitute authorizes the Department of Financial Services (DFS) to adopt rules specifying injuries qualifying as grievous bodily harm of a nature that shocks the conscience, it does not provide rulemaking authority for the DFS to specify the types of injuries that would qualify a correctional officer (CO) as being "seriously injured." It is unclear if this type of injury would be considered grievous bodily harm. If this term is not defined, it could result in additional litigation costs and delays in resolving compensability of claims.

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<sup>44</sup> See *supra* note 36.

<sup>45</sup> See *supra* note 35.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Phone conversation with Department of Management Services on Feb. 17, 2022.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 112.1815, 111.09, 119.071, and 627.659 of the Florida Statutes, and provides cross references to s. 112.1815(1), F.S.

This bill creates section 112.18155 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on February 2, 2022:**

The CS revises posttraumatic stress disorder compensability provisions for correctional officers by changing the qualifying events for correctional officers and eliminating provisions creating eligibility for correctional probation officers.

- B. **Amendments:**

None.