

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.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 314

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Rodriguez

SUBJECT: Licensed Counseling for First Responders

DATE: February 22, 2023 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	Fav/CS
2.	_____	_____	CA	_____
3.	_____	_____	FP	_____

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 314 requires a state or local government agency to provide licensed counseling to an employee or volunteer who is a law enforcement officer, firefighter, emergency medical technician, paramedic, correctional officer, or correctional probation officer if the employee has witnessed certain traumatic events in the course of the employee’s or volunteer’s official duties.

The licensed counseling to address the traumatic event must be provided by a licensed psychologist, psychiatrist, clinical social worker, marriage and family therapist, or a mental health counselor chosen by the affected employee or volunteer, but the employing agency must pay for the first 12 hours and up to 24 additional hours if the counselor determines such counseling will likely improve the first responder’s condition. The cost for the employer-paid counseling may not exceed \$500 per hour. The employer-paid counseling must be completed within 1 year after the first counseling visit. The employing agency may not require the employee to use leave if the counseling is scheduled during the employee’s established work hours.

The public employers must report annually to the Chief Financial Officer data reflecting participation in the program and worker compensation claims relating to these employees.

The costs that will be incurred by the state and local governments are indeterminate.

The bill takes effect July 1, 2023.

II. Present Situation:

First Responder Worker Compensation Benefits

Section 112.1815, F.S., provides special provisions relating to employment-related accidents and injuries to first responders. “First responder” is defined to include law enforcement officers, firefighters, emergency medical technicians, and paramedics employed by state or local government.¹ Volunteer law enforcement officers, firefighters, emergency medical technicians, and paramedics engaged by state or local government are also included as first responders in this section.²

Under this law, a posttraumatic stress disorder (PTSD) suffered by a first responder may be a compensable occupational disease for worker compensation purposes. The disorder must result from the first responder acting within the course of employment and must be diagnosed by a licensed psychiatrist as due to the first responder’s experience of one of the following qualifying events:³

- Seeing for oneself a deceased minor;
- Seeing or hearing for oneself the death of a minor;
- Seeing or hearing for oneself an injury to a minor who subsequently died before or upon arrival at a hospital emergency department;
- Participating in the physical treatment of an injured minor who subsequently died before or upon arrival at a hospital emergency department;
- Manually transporting (performing physical labor to move) an injured minor who subsequently died before or upon arrival at a hospital emergency department;
- Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience;
- Seeing or hearing for oneself a death, including suicide, that involved grievous bodily harm of a nature that shocks the conscience;
- Seeing or hearing for oneself a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing as defined in 28 U.S.C. s. 530C, manslaughter, self-defense, misadventure, and negligence.
- Seeing or hearing for oneself an injury, including 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;
- Participating in the physical treatment of an injury, including 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; or
- Manually transporting (performing physical labor to move) a person who was injured, including attempted suicide, and 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.

¹ Section 112.1815(1), F.S.

² *Id.*

³ Section 112.1815(5)(a)2., F.S.

The Department of Financial Services has adopted a rule⁴ that specifies injuries that qualify as “grievous bodily harm of a nature that shocks the conscience.” These injuries are:

- Decapitation (full or partial);
- Degloving (a traumatic injury that results in the top layers of skin and tissue being torn away from the underlying muscle, connective tissue or bone);
- Enuclation (eyeball protruding from the orbit);
- Evisceration (disembowelment);
- Exposure of one or more of the following internal organs:
 - Brain;
 - Heart;
 - Intestines;
 - Kidneys;
 - Liver; or
 - Lungs.
- Impalement;
- Severance (full or partial); and
- Third degree burn on 9 percent or more of the body.

Benefits for the first responder in this instance do not require a physical injury to the first responder. The notice of injury in cases of compensable PTSD must be given within 90 days of the qualifying event or the diagnosis of the disorder, whichever is later. A claim must be noticed within 52 weeks after the qualifying event or the diagnosis of the disorder, whichever is later.⁵

A first responder who has been diagnosed with PTSD as a result of experiencing a qualifying event is eligible for medical treatment and wage replacement benefits under chapter 440, F.S.

The number of employees and volunteers who are first responders, correctional officers, and correctional probation officers is estimated to be roughly 205,000. There are 48,615 certified law enforcement officers,⁶ 28,220 correctional officers,⁷ 2,108 correctional probation officers,⁸ 49,805 certified firefighters,⁹ 40,500 active certified emergency medical technicians,¹⁰ and 35,800 active certified paramedics.¹¹

Employee Assistance Programs

Section 110.1091, F.S., allows a state agency to provide a counseling, therapeutic, or other professional treatment program to any employee who has a behavioral disorder, medical

⁴ Rule 69L-3.009, F.A.C.

⁵ Section 112.1815(5)(d), F.S.

⁶ Florida Department of Law Enforcement, <http://www.fdle.state.fl.us/CJSTC/Publications/Quarterly-Update.asp>.

⁷ *Id.*

⁸ *Id.*

⁹ E-mail from Matt Voyer, Division of State Fire Marshal, to Gabriela Limones-Borja, Governmental Oversight and Accountability Committee, The Florida Senate (Feb. 17, 2023) (on file with Senate Governmental Oversight and Accountability Committee).

¹⁰ Florida Department of Health, Division of Medical Quality Assurance “Annual Report and Long-Range Plan,” <https://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/index.html>.

¹¹ *Id.*

disorder, or substance abuse problem, or who has an emotional difficulty that affects the employee's job performance. The Department of Management Services has taken the lead on establishing the program on behalf of state agencies.

The State Employee Assistance Program is administered by KEPRO. Under this program, state employees are allowed up to four counseling sessions with a professional counselor by phone, and the Employee Assistance Program will provide a referral to see a local counselor at no cost for issues such as anxiety, stress, grief, and depression. Other governmental employers offer similar programs but are not required to offer such programs.

The personal identifying information of a state employee contained in records held by an employing state agency relating to an employee's participation in an employee assistance program is confidential and exempt from public inspection and copying requirements.¹²

Health Insurance Coverage

The State of Florida, similar to other public sector entities, offers health insurance benefits to its employees and dependents. Within the State Group Health Insurance Program, administered by the Department of Management Services, a covered employee can seek mental health treatment. The covered employee would incur the \$40 copayment for specialty care if in the health maintenance organization setting or a 20 percent coinsurance if in the Preferred Provider Organization setting. The covered employee will also be eligible for the prescription drug program upon payment of the appropriate copayments or coinsurance.¹³

Patient medical records and medical claims records of state employees, former state employees, and their eligible covered dependents in the custody or control of the state group insurance program are confidential and exempt from the public inspection and copying requirements.¹⁴ Likewise, all medical records and medical claims records in the custody of a unit of county or municipal government relating to county or municipal employees, former county or municipal employees, or eligible dependents of such employees enrolled in a county or municipal group insurance plan or self-insurance plan shall be kept confidential and are exempt from public inspection and copying requirements.¹⁵

III. Effect of Proposed Changes:

Sections 1 and 2 amend ss. 112.1815 and 112.18155, F.S., to require the employing agency of a law enforcement officer, firefighter, emergency medical technician, paramedic, correctional officer, or correctional probation officer to pay for up to 12 hours of licensed counseling for the employee who has experienced certain events in the course of employment. If the mental health professional determines that the employee's condition is likely to improve with additional counseling, the employing agency must pay for up to an additional 24 hours of licensed

¹² Section 110.1091, F.S.

¹³ Florida DMS, Division of State Group Insurance, *2023 Benefits Guide*, https://www.mybenefits.myflorida.com/content/download/157212/1042248/2023_Benefits_Guide12-28.pdf (last visited Feb. 20, 2023).

¹⁴ Section 110.123(10), F.S.

¹⁵ Section 112.08(7), F.S.

counseling. The counseling may be in person or through telehealth. The cost of such employer-paid counseling may not exceed \$500 per hour.

The licensed counseling must be provided by a licensed psychiatrist, psychologist, clinical social worker, a marriage and family therapist, or a mental health counselor. The licensed counseling required to be paid by the employing agency must be completed within 1 year of the initial counseling visit.

The employee is permitted to make the first selection of a licensed mental health professional. If that professional declines to provide counseling, the employing agency must provide a list of other qualified licensed mental health professionals.

The employing agency may not require the employee to use accrued leave, personal leave, or sick leave to attend counseling during established work hours.

The public employers of these employees and volunteers must report annually to the Chief Financial Officer on the participation of its employees in the program.

Section 3 makes a legislative finding that the bill fulfills an important state interest.

Section 4 provides that the act takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides, in pertinent 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 unless:”

- 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 state and local governments.

The bill requires a county or municipality employing first responders and correctional officers to spend money to provide counseling services in certain instances. The bill applies to all similarly situated governmental agencies employing first responders, correctional officers, and correctional probation officers in the State of Florida, including state agencies, school districts, universities, and colleges. Section 3 of the bill contains a legislative finding that the bill fulfills an important state interest. Thus, the bill appears to be binding on counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The cost to state and local government employers of law enforcement officers, firefighters, emergency medical technicians, paramedics, correctional officers, or correctional probation officers is indeterminate. These costs, however, may be significant because the bill allows the affected employee to select a licensed mental health professional with the cost of counseling not to exceed \$500 per hour paid by the employing agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unclear whether the personal identifying information of employees and volunteers participating in this counseling program will be exempt from public disclosure requirements under current public record exemptions. To ensure the exempt status of this information, the Legislature should consider whether to enact a specific public records exemption to protect such information.

VIII. None. Statutes Affected:

This bill substantially amends sections 112.1815 and 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 Governmental Oversight and Accountability on February 21, 2023:

The committee substitute:

- Expands the employees eligible for the counseling program to include correctional officers and correctional probation officers;
- Limits the counseling to address the enumerated experiences that may cause posttraumatic stress;
- Limits the cost of counseling to no more than \$500 per hour (paid by the employer);
- Expands the licensed mental health professionals to include clinical social workers, marriage and family therapists, and mental health counselors;
- Clarifies that the counseling is in addition to other employer-paid health insurance coverage;
- Adds reporting by the employers to the Chief Financial Officer on the use of such counseling services; and
- Adds a legislative finding that the bill fulfills an important state interest.

- B. **Amendments:**

None.