

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: SB 314

INTRODUCER: Senator Rodriguez

SUBJECT: Licensed Counseling for First Responders

DATE: February 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	Pre-meeting
2.			CA	
3.			FP	

I. Summary:

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 or paramedic if the employee has witnessed certain traumatic events in the course of the employee's or volunteer's official duties.

The licensed counseling is to be provided by a licensed psychologist or psychiatrist 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 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 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,

¹ Section 112.1815(1), F.S.

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.

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);
- Eucleation (eyeball protruding from the orbit);
- Evisceration (disembowelment);

² *Id.*

³ Section 112.1815(5)(a)2., F.S.

⁴ Rule 69L-3.009, F.A.C.

- 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 is estimated to be roughly 174,705. There are 48,600 certified law enforcement officers,⁶ 49,805 certified firefighters,⁷ 40,500 active certified emergency medical technicians,⁸ and 35,800 active certified paramedics.⁹

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 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.

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 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).

⁸ 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>.

⁹ *Id.*

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.¹⁰

III. Effect of Proposed Changes:

Section 1 amends s. 112.1815, F.S., to require the employing agency of a first responder to pay for up to 12 hours of licensed counseling for a first responder who has experienced certain events in the course of employment. If the mental health professional determines that the first responder's condition is likely to improve with additional counseling, the employing agency must pay for up to an additional 24 hours of licensed counseling. The counseling may be in person or through telehealth.

The licensed counseling must be provided by a licensed psychiatrist or psychologist. The licensed counseling required to be paid by the employing agency must be completed within 1 year of the initial counseling visit.

The first responder 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 first responder to use accrued leave, personal leave, or sick leave to attend counseling during established work hours.

Section 2 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.

¹⁰ 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).

The bill requires a county or municipality employing first responders to spend money to provide counseling services in certain instances. The bill applies to all similarly situated governmental agencies employing first responders in the State of Florida, including state agencies, school districts, universities, and colleges. However, the bill does not contain a legislative finding that 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 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 first responders is indeterminate. These costs, however, may be significant because the bill allows the first responder to select a licensed mental health professional without regard to the cost incurred by the employing agency. See “Related Issues” below.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 25 through 37 of the bill require the employing agency to pay for up to 36 of “licensed counseling” for a first responder who has experienced certain enumerated events that may trigger posttraumatic stress. The bill does not expressly limit the purpose of the licensed counseling to

address posttraumatic stress. If the intent is to limit such counseling to the underlying condition, the bill could be amended to read:

“Licensed counseling” means counseling provided by a licensed mental health professional to address a first responder’s posttraumatic stress.

The bill allows the affected first responder to choose a licensed mental health professional with the costs being borne by the employing agency. Although the employing agency may have procured such services under its employee health plan or its employee assistance program, the costs incurred under this bill may be in excess of the amounts normally paid by the employer. If the intent is to ensure that the costs are within a reasonable range, the bill could be amended to limit the hourly rate to the amount payable under the employing agency’s health insurance plan plus the copayment or coinsurance component for the same or similar service.

VIII. Statutes Affected:

This bill substantially amends section 112.1815 of the Florida Statutes.

IX. Additional Information:

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

None.

B. **Amendments:**

None.